SQUIRE SANDERS

EMPLOYEE BENEFIT PLANS

The Supreme Court Decision Related to the Defense of Marriage Act

On June 26, 2013, the Supreme Court, in *United States v. Windsor*, ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. This client publication addresses potential impacts on employee benefit plans.

Section 3 of DOMA provided that same-sex marriages were not recognized for all purposes of federal law and related regulations. This included the Employee Retirement Income Security Act of 1974 (ERISA) and federal income tax law.

Due to the Supreme Court's ruling, if an employee and a same-sex domestic partner are married under state law, the employer will be required to recognize the same-sex partner as the employee's "spouse" for purposes of ERISA as well as for related federal tax purposes.

Potential Impacts on Employee Benefit Plans

The following are some general impacts of the Supreme Court's decision that appear to apply when an employee and same-sex partner are married under state law:

- 401(k) and other defined contribution retirement plans will have to provide that the employee's same-sex spouse will be the primary beneficiary, absent spousal consent.
- A defined benefit pension plan will have to provide payment of a "qualified preretirement surviving spouse" annuity to the employee's same-sex spouse. In addition, at retirement, payment will have to be made to the employee in the form of a "qualified joint and survivor annuity". Spousal consent requirements will have to be satisfied in order to elect other benefits.
- For a retirement plan that is subject to ERISA, a same-sex spouse or former same-sex spouse could be named as an alternate payee under a qualified domestic relations order (QDRO).
- While the ruling does not appear to require healthcare plans to provide coverage to same-sex spouses, if a same-sex spouse is covered by the plan, COBRA rights would apply upon a divorce or legal separation.
- There appear to be a variety of more favorable federal income tax results in relation to healthcare plans and other fringe benefit arrangements (e.g., no imputed income for an employee), as well as for health reimbursement accounts, Section 125 cafeteria plans (and related flexible spending accounts) and high deductible healthcare plans (and related health savings accounts).

The full impact of the Supreme Court's decision on employee benefit plans is not yet clear. There are many perplexing questions including possible retroactive effects of this ruling. Currently, 12 states (Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington) and the District of Columbia have enacted laws that recognize same-sex marriage. A number of questions remain for companies located and couples working in other states. These issues need to be considered in light of the changes in the laws and your company's benefit programs. We also are hopeful that the IRS and DOL will issue written guidance soon. For more information, please consult a Squire Sanders advisor below.

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