

# How Will the Supreme Court's DOMA Decision Impact Employers?

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By now, you have most likely read the headlines reporting that a recent United States Supreme Court decision, [United States v. Windsor](#), found Section 3 of the Defense of Marriage Act ("DOMA") to be an unconstitutional deprivation of rights protected by the Fifth Amendment. You may not have yet considered what impact this decision will have on your business operations.

As of last week twelve states recognized same-sex marriage; however, in the wake of [Hollingsworth v. Perry](#) (also decided last week), California becomes the thirteenth. Despite the increasing state-level trend toward recognizing same sex marriage, DOMA had previously prevented the federal government from following suit.

At the heart of the decision was the Supreme Court's pronouncement that Section 3 of DOMA, which amended the Dictionary Act—a federal law providing rules of construction for over 1,000 federal laws and all federal regulations-- was unconstitutional because its definition of "marriage" and "spouse", which excluded same-sex partners, violated the principles of equal protection.

DOMA does not impose an obligation on the other 37 states requiring them to authorize or recognize same-sex marriage. The choice as to how to define marriage will continue to be left to each state, for now.

The DOMA decision will have immediate impact on employers in states that recognize same-sex marriage. The Court made clear in [United States v. Windsor](#), however, that its opinion is "confined to those lawful marriages" in states that permit same-sex marriage.

The following will apply to employees who were married in and live in a state that recognizes same-sex marriage.

- **Tax changes.** Employers will no longer need to impute the value of medical, vision and dental insurance contributions of their employees' same-sex spouses as income to the employee. There is some debate as to whether employers and employees will be permitted to amend prior tax returns to receive a refund of the tax paid on the imputed earnings in prior years. Employees may also now pay for same-sex spouses' benefits coverage using pretax earnings through a Section 125 plan.
- **COBRA.** Employers must now offer COBRA continuation of benefits coverage to same-sex spouses.
- **401(k).** Employers are required to treat same-sex spouses equally as opposite-sex spouses when determining death benefits; same-sex spouses will be required to consent to beneficiary designations, as opposite-sex spouses are currently required to do.
- **FMLA.** The protections of the Family Medical Leave Act ("FMLA") will now allow employees to utilize FMLA leave to care for a sick or disabled same-sex spouse.

The impact on employers in states such as North Carolina that do not recognize same-sex marriage will not be as far reaching at this time. It is unclear at this point whether federal agencies such as the IRS and Social Security Administration will look at the marriage laws in a state where the couple was married or in the state

where the couple resides. For example, it is currently unknown whether a couple legally married in New York, but living in North Carolina, which prohibits same-sex marriage, would be permitted to file a tax return as married filing jointly. Some predict that President Obama will issue an executive order to settle this matter in the coming weeks. For now, unanswered questions remain pending the passage of regulations or the issuance of an executive order to provide interpretive guidance. Ward and Smith, P.A. will continue to monitor these evolving issues in the future to assist our clients' compliance efforts.

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