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Benefit Beat

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THE LAW OF THE LAND: A SPOUSE IS A SPOUSE

On June 26, 2015 the Supreme Court rendered its **opinion** in the matter of *Obergefell v. Hodges.* Two questions were addressed. First, the Supreme Court has determined that it is a violation of the Fourteenth Amendment's Due Process Clause of the U. S. Constitution (the equal protection clause) for a state to restrict marriage to only opposite sex people. Secondly, the Supreme Court ruled that a state must recognize same-sex marriage entered into in another jurisdiction. In short, as a result of this decision, all states must recognize same sex marriages whether entered in that state or in another state.

This decision comes two years to the day from the *United States v. Windsor* case where the Court struck down the Defense of Marriage Act (see CBIZ *Benefit Beat*, ***Supreme Court Opines on Same-Sex Marriage Issues,*** 7/5/13), effectively making same-sex marriage recognized for all federal purposes.

IMPACT ON EMPLOYEE BENEFITS

What the *Obergefell v. Hodges* ruling means for employment and particularly employee benefit purposes will surely evolve in the days and months to come, as states discern how to implement this ruling.

Health Coverage

It is probable that insurance laws defining spouse will be reviewed and modified, if necessary, to reflect this broader definition. Similarly, insurance contracts, such as health insurance contracts and life insurance contracts that define spouse may be modified by the insurers to reflect this new definition.

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At this point, it is unclear whether a self-funded health plan subject to ERISA could define spouse more narrowly. As a reminder, ERISA does not define spouse for welfare benefit plan purposes. Even if a self-funded plan can be written to define spouse to include only opposite sex spouse, this could raise discrimination issues, particularly in jurisdictions that have laws prohibiting discrimination based on sexual orientation. Any employer contemplating a limited definition of spouse should consult with legal counsel before taking any action.

A couple married in a state that newly recognizes same-sex marriage, the marriage would qualify as a special enrollment opportunity for health plan purposes.

Coordination with Domestic Partner Coverage

Employers that offer domestic partner benefits may want to consider whether to continue these provisions. Some states, such as California, continue to require coverage of registered domestic partners for many benefit plan purposes. In many other jurisdictions, however, this is not required.

If an employer chooses to retain an eligibility classification for domestic partnerships, civil unions or the like, it is important to remember that the tax consequences for benefits provided in such situations remain unchanged. In other words, only if the domestic partner qualifies as a tax dependent can tax-favored benefits be provided.

Employer-provided Pension and Retirement Plans

For retirement plan purposes, this new ruling will have little impact on ERISA plans since they are governed by federal law and the definition of spouse was broadened by *Windsor*. However, for state and local government plan purposes, spouse will now include both same and opposite sex.

Beneficiary Designations

Employers might want to recommend that employees review their beneficiary designations as it applies to the relevant plan(s) such as life insurance and retirement plans. This is generally a good practice at open enrollment to remind employees to review and update, as appropriate, their beneficiary designations.

State Tax Matters

As a result of *Windsor*, a same-sex spouse is treated for tax purposes in the same manner as an opposite sex spouse. With the advent of this new ruling, for state tax purposes, all spouses whether same or opposite sex will be treated in the same manner. It is likely states will issue guidance on this matter in the near future.

Once again, employers should review their definition of spouse in all of their welfare benefit plans, cafeteria plans, and retirement and savings plans and make any necessary modifications. In addition, an employer might also want to review all of its employment policies to ensure these policies include an appropriate definition of spouse.

EEOC Updates Pregnancy Discrimination Guidelines

Last summer, the Equal Employment Opportunity Commission (EEOC) released enforcement guidance, together with FAQs and Fact Sheet, relating to pregnancy discrimination (see ***The Pregnancy Discrimination Act gets some TLC if not a full Makeover*** (CBIZ *Benefit Beat*, 8/20/2014). As a result of the recent court case in *Young v. United Parcel Service, (*see ***The Intersection of the Pregnancy Discrimination Act and the Employer's Workplace Policy***, CBIZ *Benefit Beat*, 5/12/15), the EEOC has released **updated guidance** to address some of the Supreme Court's recommendations for determining whether a workplace policy is discriminatory against pregnant workers.

Specifically, the revised guidance addresses disparate treatment and light duty. In a nutshell, the EEOC guidance indicates that even though an employer policy is not intended to discriminate against pregnant workers, it may nevertheless violate the Pregnancy Discrimination Act, as well as the Americans with Disabilities Act, if such policy appears to impose significant burdens on pregnant workers without a strong business justification for the policy. Accordingly, if an employer's work place policy provides for light duty accommodations, including lifting restrictions, it should ensure that the offer of light duty accommodation be made available to all members of the employer's workforce.

NEW TRADE LAW INCREASES TAX INFORMATION REPORTING PENALTIES AND REINSTATES HEALTH CARE TAX CREDIT

On June 29, 2015, President Obama signed the ***Trade Preferences Extension Act of 2015*** (Public Law No. 114-27). Following are two topics of interest to employers contained in this new law.

Increase in Tax Information Reporting Penalties

The Internal Revenue Service can assess penalties when certain tax information is not provided on a timely basis. Specifically, penalties may be assessed for failure to file information returns or provide payee statements, such as the Form W-2 and Form 1099, and notably, the newly imposed Affordable Care Act's Forms 1094 and 1095, or related payee statements. The new Trade law increases these penalties, as follows:

- The penalty for failure to file an information return increases from $100 to $250 for each return for which such failure occurs. The total penalty imposed for all failures during a calendar year increases from $1.5 million to $3 million.
- The penalty for failure to provide a correct payee statement increases from $100 to $250 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed $1.5 million.

Special rules apply that increase the per-statement and total penalties if there is intentional disregard of the requirement to furnish a payee statement.

These increased penalties become effective January 1, 2016, meaning for returns due in early 2016 for the 2015 tax year.

Reinstatement of Health Care Tax Credit

The Health Care Tax Credit (HCTC) was initially placed into law by the Trade Act of 2002. The purpose of the HCTC was to provide premium assistance in the form of a tax credit, equaling 72.5% of COBRA premium paid by individuals who lost jobs due to foreign trade-related agreements. The HCTC expired on December 31, 2013.

The new Trade law not only reinstates the HCTC through 2019, but it also provides for retroactive certifications from when the program expired on January 1, 2014. In addition, the new law makes changes to the group eligibility requirements and individual benefits and services available under the Trade Adjustment Assistance (TAA) program since January 1, 2014.

The Department of Labor's Employment and Training Administration **website** provides additional information about the reinstatement of the HCTC, as well as information relating to reconsideration of previously denied petitions and certification processes as a result of the new law.