

Repeal of Defense of Marriage Act Would Impact Benefits

Bill would change federally mandated benefits available to employees and their same-sex spouses

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On Sept. 15, 2009, a bill was introduced in the U.S. House of Representatives that would repeal the federal Defense of Marriage Act (DOMA).

The federal DOMA was enacted in 1996 and provides that for all purposes of federal law, such as the Employee Retirement Income Security Act (ERISA) and the federal tax code, the word "marriage" means "only a legal union between one man and one woman as husband and wife" and the word "spouse" refers "only to a person of the opposite sex who is a husband or wife." In addition, the DOMA provides that no state will be required to recognize a same-sex relationship that is considered a legal marriage in another state.

The bill (H.R. 3567), titled the "**Respect for Marriage Act**," requires that all marriages that are valid under state laws are also valid and recognized under federal law. States that have not legalized same-sex marriage would not be required to recognize same-sex marriages performed elsewhere, but same-sex marriage performed in a state where same-sex marriage has been legalized would be recognized for purposes of federal law.

Same-sex marriage is legal in Massachusetts, Connecticut, Iowa and Vermont as of September 2009. California recognizes same-sex marriages performed in the state between June 17 and Nov. 4, 2008. Same-sex marriage becomes legal in New Hampshire on Jan. 1, 2010. New York and the District of Columbia recognize same-sex marriages performed lawfully elsewhere.

Impacting Benefits

Employers should take note, because the bill would make significant changes to the federally mandated benefits available to employees and their same-sex spouses. For example, employers with pension or 401(k) plans would be required to recognize same-sex spouses for purposes of determining the surviving spouse annuities or other death benefits under these retirement plans. The federal income tax treatment of health coverage for an employee's same-sex spouse would change such that employees would no longer have to be taxed on the income imputed for the employer's contribution to the same-sex spouse's coverage. Employers would be required to permit employees to take family and medical leave to care for the illness of a same-sex spouse.

*Jonathan J. Boyles is a partner in the law firm of **McDermott Will & Emery LLP** based in the firm's New York office. He is a member of the Employee Benefits Department. Todd A. Solomon is a partner based in the firm's Chicago office. As a member of the Employee Benefits Department, his practice is concentrated primarily on designing, amending and administering pension plans, profit-sharing plans, 401(k) plans, employee stock-ownership plans, 403(b) plans, and nonqualified deferred compensation arrangements. Brian J. Tiemann is an associate based in the firm's Chicago office and a member of the Employee Benefits Department.*

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