

Court Rulings that Federal Ban on Same-Sex Marriage is Unconstitutional Raises Significant Implications for Employee Benefit Plans

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On July 8, 2010, the U.S. District Court for the District of Massachusetts issued two separate decisions declaring the federal Defense of Marriage Act (DOMA), Pub. L. 104-199, which prohibits the recognition of same-sex marriages for purposes of any federal law, unconstitutional. Although the Department of Justice (DOJ) is expected to request a stay of the decisions pending an appeal, the decisions could have significant implications for employee benefits plans considering the many federally-mandated spousal benefits that were previously not required to apply to same-sex marriages in light of DOMA.

The Equal Protection Decision

The first case, *Gill v. Office of Personnel Management*, No. 09-CV-10309, 2010 BL 155746 (D. Mass. July 8, 2010), was filed on behalf of eight same-sex couples who are legally married in Massachusetts and three surviving spouses of same-sex marriages performed in the state. Each of the plaintiffs applied for a certain federal benefit or program that is extended to legal spouses or the surviving spouses of a valid marriage (e.g., spousal benefits under federal income tax laws, employee benefits provided to federal workers and retirees, and Social Security survivor payments), but were denied the benefit because the DOMA prohibited their marriage from being recognized under federal law. The Massachusetts district court found that the government's justifications for the DOMA failed to establish a rational relationship between prohibiting federal recognition of same-sex marriages and a legitimate government objective; as a result, same-sex couples were denied equal protection under the laws as guaranteed by the equal protection principles of the Due Process Clause of the Fifth Amendment.

The Tenth Amendment (States' Rights) Decision

The second case, *Coakley v. U.S. Department of Health and Human Services*, No. 09-CV-11156, 2010 BL 155741 (D. Mass. July 8, 2010), was filed by Massachusetts Attorney General Martha Coakley on behalf of the Commonwealth. The Attorney General argued that the DOMA impermissibly denies more than 16,000 same-sex

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couples who are legally married under Massachusetts law the rights and protections afforded by over 1,100 federal laws through programs such as MassHealth, a Medicaid program that provides healthcare to low income residents, and the burial of Massachusetts veterans and their spouses in cemeteries owned and operated by the Massachusetts Department of Veterans Services. The Attorney General argued that the DOMA interferes with Massachusetts's sovereign authority to define and regulate the marital status of its residents. The district court ruled that the DOMA was unconstitutional because it interferes with the rights of a state to regulate marriage and forces Massachusetts to discriminate against its own citizens. According to the district court, "[t]he federal government, by enacting and enforcing DOMA, plainly encroaches upon the firmly entrenched province of the state, and in doing so, offends the Tenth Amendment. For that reason, the statute is invalid."

Impact on Other DOMA Provisions

The lawsuits challenge only the portion of the DOMA that prevents the federal government from affording pension and other benefits to same-sex couples. The rulings do not address Section 2 of the DOMA, which stipulates that no state shall be required to recognize a same-sex relationship that is considered a legal marriage in another state.

Next Procedural Steps

The DOJ, as the defendant in the cases on behalf of the federal government, is expected to appeal and request a stay of the decisions. If a stay is granted, the DOMA will continue to be valid and enforceable pending the outcome of the appeal.

What Should Employers Do Now?

Assuming the DOJ is successful in obtaining a stay of the decisions, employers will need to closely follow the progress of the appeals of these cases (and separate DOMA litigation in California). Repeal of the DOMA would presumably once again cause federal law to defer to state law determinations of otherwise valid marriages. Federal laws governing employee benefit plans would then likely require employers to treat employees' same-sex and opposite-sex spouses equally for purposes of the benefits that the employer extends to spouses. For example, in the retirement plan context, employers with pension and 401(k) plans would be required to recognize same-sex spouses for purposes of determining surviving spouse annuities or death benefits under their retirement plans. Similarly, in the welfare plan context, items such as 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, and COBRA continuation would be required to be offered to same-sex spouses. Employers would also be required to permit employees to take family and medical leave to care for the illness of a same-sex spouse.

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