

## How Does the DOMA Ruling Affect Your Business?

On Wednesday, June 26, 2013, the U.S. Supreme Court released a landmark decision regarding the Defense of Marriage Act (DOMA), a federal law that, among other things, prohibited federal recognition of same-sex couples who married legally under state law. In *United States v. Windsor*, the U.S. Supreme Court ruled that parts of the DOMA are unconstitutional. Since DOMA limited the definition of “marriage” and “spouse” under certain federal laws to only opposite-sex couples, same-sex couples that were legally married in states that recognize such marriages were subject to different legal protections and tax treatment of certain benefits.

### Supreme Court Strikes Section 3 of DOMA

The justices ruled in a 5-4 decision that Section 3 of the DOMA Act is unconstitutional. The justices struck down Section 3’s federal definition of “marriage” and “spouse,” while leaving intact the law’s Section 2, which lets states refuse to recognize same-sex marriages performed under the laws of other states. Specifically, the Court ruled that by seeking to injure same-sex spouses that state law seeks to protect, DOMA violates basic due process and equal protection principles applicable to the federal government. Since DOMA limited the definition of “marriage” and “spouse” under many federal laws to only opposite-sex couples, the legal protections and preferential tax treatment available to same-sex couples in states that recognize same-sex marriage were not applicable under federal law. At present, 12 states (Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington) and the District of Columbia have laws that recognize same-sex marriage. The ruling means that the federal government will be required to respect state same-sex marriages and accord those marriages the same benefits and obligations of opposite-sex marriages.

### What Does This Mean for Employers?

At this point in time the impact of the ruling may be very broad, potentially affecting hundreds of laws and regulations upon which payroll, HR, and employee benefits systems are based. Its full effect may not be clear until the various federal and state regulatory authorities issue revised guidance.

Here are a few examples of how the Court’s ruling will reinterpret well-known and well-established federal laws for those employees who have same-sex spouses who were married in and reside in a state that recognizes same-sex marriage:

- **Federal laws governing employee benefit plans** will require companies to treat employees’ same-sex and opposite-sex spouses equally for purposes of the benefits extended to spouses.
- **Employees will no longer have to pay federal income taxes on the income imputed** for an employer’s contribution to a same-sex spouse’s medical, dental or vision coverage. And workers can pay for same-sex spouses’ coverage on a pretax basis under a Section 125 plan.
- **Businesses will have to offer COBRA** continuation coverage to same-sex spouses.
- **Employers with pension plans** will be required to recognize same-sex spouses for purposes of determining surviving-spouse annuities. Same-sex spouses must also agree to receive payment of their deceased spouse’s pension benefits in a form other than a 50 percent joint and survivor annuity, with the same-sex spouse as the beneficiary.



- **Organizations with 401(k) plans** will have to recognize same-sex spouses for purposes of determining death benefits, and same-sex spouses must consent to beneficiary designations.
- **Employees must be permitted to take family and medical leave** to care for an ill same-sex spouse.
- **Employees with same-sex spouses should be eligible for tax-free benefits** paid for by the employer, such as health, dental and vision benefits, as well as FSA, HRA and HSA reimbursements, even if the same-sex spouse does not qualify as an employee's federal tax dependent

### Next Step for Employers

Employers should continue to monitor DOMA-related developments, track their state laws concerning same-sex marriage and work with trusted advisors, like HR Knowledge, who can provide them with the latest, up-to-date information and assist them in remaining compliant with the law. A critical question for employers, for example, is the extent to which the decision might have retroactive effect and how quickly employers need to react.

*“The impact of the ruling may be very broad, potentially affecting hundreds of laws and regulations upon which payroll, HR and employee benefits systems are based. Additionally, its effect may not be clear until the various federal and state regulatory authorities issue revised guidance,” – ADP published comments on DOMA ruling*

To view the full Court decision, [click here](#).

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