



DELAWARE

EMPLOYMENT LAW LETTER

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William W. Bowser, Editor; Scott A. Holt and Adria B. Martinelli,
Associate Editor
Young, Conaway, Stargatt & Taylor, LLP

Vol. 18, No. 8
August 2013

SAME-SEX MARRIAGE

What does Supreme Court's DOMA decision mean for Delaware employers?

by Lauren Moak Russell

In a long-anticipated decision issued on June 26, 2013, the U.S. Supreme Court declared that the one-man/one-woman marriage provision of the federal Defense of Marriage Act (DOMA) is unconstitutional because it violates an individual's right to equal protection. The Court's decision means that "marriage" for purposes of federal law is now defined by each state individually. This case is of particular significance to Delawareans because our state recently enacted legislation permitting same-sex marriage and recognizing such marriages performed in other jurisdictions.

History of DOMA

DOMA, signed into law by President Bill Clinton in 1996, declared that for purposes administering all federal laws, marriage was limited to a union between one man and one woman. The practical effect of DOMA was to prohibit federal recognition of same-sex marriages legalized at the state level.

As of the date of the Supreme Court's decision, 13 states—including Delaware—and the District of Columbia have legalized same-sex marriage. Under DOMA, same-sex spouses in those states weren't eligible for a slew of federal benefits, including unpaid leave under the Family and Medical Leave Act (FMLA), exemption from taxation on health insurance benefits, and hundreds of other benefits traditionally conferred on spouses, both inside and outside the employment law context.

Supreme Court's decision

In its decision in *United States v. Windsor*, the Supreme Court invalidated the definition of marriage under DOMA on the basis that it denied same-sex couples equal protection in violation of the U.S. Constitution. As we discuss in more detail in the article on pg. 3, "5 ways Supreme Court's *Windsor* decision affects you," the Court's ruling opens the way for same-sex spouses to receive an estimated 1,138 federal benefits, rights, and privileges. While the Court's opinion has sparked controversy, at least one thing is clear—same-sex couples who are lawfully married under the laws of their state of residence may now claim federal benefits that were previously available only to opposite-sex couples.

What the decision means for Delaware employers

On July 1, less than a week after the Supreme Court issued its decision in *Windsor*, the state of Delaware began issuing marriage licenses to same-sex couples. Delaware will no longer perform civil unions under the Civil Union Equality Act (CUEA), passed in 2010. Same-sex couples who entered into a civil union before July 1, 2013, have the option of voluntarily converting their civil union to a marriage before July 1, 2014, at which time all remaining civil unions will be automatically converted.

So what does this mean for Delaware employers? Well, from the perspective of state benefits, it doesn't mean much. Same-sex couples have been entitled to equal benefits under Delaware law since the CUEA went into effect on January 1, 2012. From the perspective of federal benefits, however, everything will change.

Delaware employers must now extend all federal benefits available to opposite-sex married couples to same-sex married couples. The effect of the Court's decision is immediate—unlike the impact of new legislation, there will be no delay between the Court's ruling and your obligation to extend benefits.

Although the Court's decision will change who is eligible for benefits, you shouldn't worry—you have the necessary framework in place already. Same-sex couples, while newly eligible for benefits, should be subject to exactly the same process that's already used for opposite-sex couples seeking benefits. You should provide same-sex couples seeking FMLA leave, COBRA benefits, or other federal benefits precisely the same paperwork you already have and request from them the same information within the same time frame that has been applied in the past.

One thing to keep in mind that may require a bit of additional paperwork is the necessary adjustment to tax and health insurance forms. Spouses who couldn't previously claim each other on federal tax forms may need to submit new IRS Form W-4s. In addition, if your company offers health insurance plans covered by the Employee Retirement Income Security Act (ERISA) and you didn't previously extend benefits to same-sex spouses, those plans will now be open to enrollment for those individuals. Also, same-sex spouses will now become the primary beneficiary on all 401(k) plans.

Bottom line

In the end, Delaware employers are likely in a better position to adapt to the Supreme Court's decision than employers in many other states. We've been extending benefits to same-sex partners under state law since January 1, 2012. The key to a successful transition is to remember that all employees (and their spouses) must be treated the same. Not only should the same state and federal benefits be extended to same-sex and opposite-sex couples, but all employees should be required to go through the same process to obtain those benefits.

Absent unusual circumstances—which may arise as the federal government adjusts to the implications of the Court's ruling—you should ask your employees with same-sex spouses to fill out the same forms and provide the same supporting documentation and subject them to the same deadlines as all of your other employees. If you find that deviating from your standard practices because of unusual circumstances is truly unavoidable, communicate clearly with the affected employees, and consult legal counsel as necessary.

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