

CLIENT ADVISOR



Supreme Court Finds DOMA Unconstitutional— What Is The Impact On Employers?

On June 26, 2013, the U.S. Supreme Court issued a decision in United States v. Windsor that Section 3 of the Defense of Marriage Act (DOMA), which defined marriage for purposes of federal law as a union between one man and one woman, is unconstitutional. The Court's majority ruled that DOMA's attempt to supersede a state's decision to recognize same-sex marriage was a deprivation of due process and the principles of equal protection under the law. Under DOMA, same-sex spouses were deprived the rights and obligations conveyed upon opposite-sex spouses under federal laws relating to employer-sponsored benefit plans, federal income taxes, employer leave policies, and immigration law.

The decision means state law can apply to the definitions of marriage and spouse. This means that under Massachusetts law—which has recognized same-sex marriage since 2003—same-sex couples who are married in and reside in Massachusetts must be afforded the same rights and obligations as opposite-sex couples. There are over 1,000 places in federal law where a right or responsibility is based on marital status. Here are some of the most significant impacts Massachusetts employers should be aware of:

Federal Income Tax Withholdings: Employees may need to file a new Form W-4 to reflect their married filing status under federal law.

Tax Implications: Employees no longer have to pay federal income taxes on income imputed for the value of health insurance provided to a same-sex spouse. Employees may also file amended federal tax returns for up to three years.

Family Medical Leave Act (FMLA): Eligible employees will be able to take FMLA leave to care for a same-sex spouse, or take family military leave under qualifying circumstances when a same-sex spouse is in the military.

Employee Benefits (HIPAA, Tax Favored Health Plans & COBRA): Same-sex spouses will be eligible for benefits under tax-advantaged savings arrangements and COBRA. In addition, an employee's same-sex marriage will qualify for a special enrollment period. It is unclear whether same-sex couples will be offered a special enrollment period in the wake of the Court's decision.

We continue to await additional guidance regarding the impact of the decision on other issues such as retirement accounts (e.g. pensions) and Social Security.

Associational Discrimination Under MGL c.151B

The Massachusetts Supreme Judicial Court (SJC) recently issued a decision which expands the scope of employer liability under the state's anti-discrimination law, M.G.L., c. 151B. In Flagg v. AliMed, SJC-11182, the Court ruled that c. 151B bars employers from discriminating against employees based not only on their own handicap/disability, but also based on the handicap/disability of any person the employee associates with. Known as "associational discrimination," this type of discrimination occurs when an adverse employment action is taken as a result of an employee's relationship with a handicapped person. In Flagg, the plaintiff alleged that his employer terminated him to avoid the cost of providing health insurance to his sick wife.

While associational discrimination is not a new concept, this is the first time the SJC has interpreted c. 151B to include its coverage. At the state administrative level, the Massachusetts Commission Against Discrimination (MCAD) has previously recognized associational discrimination. At the federal level, the Americans with Disabilities Act (ADA) expressly provides for associational discrimination protection; however, the ADA only applies to employers with 20+ employees. With this ruling, associational discrimination under c. 151B will now apply to all Massachusetts employers with 6+ employees.

SPECIAL EDUCATION

In May 2013, the Fifth Edition of the Diagnostic and Statistical Manual of Mental Health (DSM-5) was released. A diagnostic tool used to make diagnoses, the DSM-5 changes how Autism sub-categories are classified and adds a new Social Communication Disorder. Special educators should be familiar with the DMS-5 and these changes; however, a technical change in a child's diagnosis under the DSM-5 will not impact eligibility for special education. Eligibility remains an educational determination for the Team.

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