



## WORDS ON WISE MANAGEMENT

### Ding, dong, DOMA's dead. What about those ruby slippers?

by Maria Reed

On June 26, the U.S. Supreme Court overturned Section 3 of the federal Defense of Marriage Act (DOMA), which had mandated that “in determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, 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.” Section 3 prohibited the government from recognizing same-sex marriage for purposes of federal benefits programs and prevented same-sex spouses of federal workers from receiving coverage through their partners’ plans.

#### ***Getting to Oz not as simple as following Yellow Brick Road***

Because DOMA no longer informs the definition of the term “spouse,” more than 1,000 federal benefits and laws that apply to an employee’s spouse will extend to same-sex spouses in legally recognized marriages. States now hold the key to certain federal benefits—including health and retirement benefits, taxes, and leave under the Family and Medical Leave Act (FMLA). Currently, Arizona and 34 other states prohibit same-sex marriage in their constitutions or state laws. However, the District of Columbia and 13 states recognize same-sex marriage.

Federal agencies are still in the process of revising policies to determine how to treat same-sex couples who have a legal marriage in one state but either reside in, move to, or work in a state that doesn’t recognize (or prohibits) same-sex marriage. For employers with worksites in multiple states, the explicit and implicit costs of compliance will rise. Certain federal benefits are available to couples who are legally married, no matter the state in which they reside; other benefits are available to those who are married but are dependent on the state in which they reside when they apply for the benefit.

Under DOMA, the value of employer-provided health insurance benefits for a same-sex spouse (unless he was a dependent) was taxable income to the employee. Because federal tax law will treat health insurance benefits for spouses the same as an employee’s own health insurance, lawfully married same-sex employees will no longer pay income tax on that

compensation, and employers will no longer have to pay payroll taxes on it. Additionally, because the change in income for those employees may change their tax rate, organizations should expect employees to request adjustments on their withholdings. Until the IRS offers guidance in this area, refer employees to qualified tax professionals in lieu of proffering any advice.

Employers must offer COBRA benefits to the lawful same-sex spouse of a terminated employee who is eligible for continued health insurance. Because spouses are the default beneficiaries under retirement plans, companies will need to revise their plans if they define “spouse” as someone of the opposite sex.

Some employees who were previously ineligible for FMLA leave may now be eligible for such leave, depending on their state. That means HR professionals will have to keep track of changing state laws. Supervisors also will need to (carefully) probe more to determine whether certain circumstances are qualifying reasons for FMLA leave. More employees will potentially qualify for leave to care for a same-sex spouse or the child of a same-sex spouse.

#### ***There’s no place like home . . . or an ideal work environment***

You can continue down the path of legal compliance or go an alternate route—one that forces your organization to reevaluate company culture and the benefits you provide employees. While not breaking the law is a key component to success, mere compliance shouldn’t be your main focus. Companies that limit benefits to the bare minimum required under the law tend to be the ones against whom employees file the most complaints.

Think of the recent ruling as an opportunity to improve your organization’s policies. Not only could it save you time and money in the future should the trend of legalizing same-sex marriages continue, but it also could attract the best talent. After all, the best employees flock to organizations that treat all their employees equally and with respect.



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