

## OBERGEFELL V. HODGES: SAME-SEX MARRIAGE DECISION IMPACTS EMPLOYEE BENEFIT PLANS

On June 26, 2015, the Supreme Court of the United States handed down a landmark opinion in *Obergefell v. Hodges*, holding that same-sex couples may exercise the fundamental right to marry in all 50 states and that there is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character. Beyond the decision's overarching social, political and economic implications for the general public, employers will need to consider how the decision impacts employee benefit plans and whether any changes should be made.

### BRIEF CASE BACKGROUND

*Obergefell* was a consolidation of cases from Kentucky, Michigan, Ohio and Tennessee, where marriage was defined as a union between one man and one woman. At issue in each case were the marriage rights of same-sex couples. Each district court had ruled in favor of the same-sex couples, but the Sixth Circuit Court of Appeals consolidated the cases and unanimously reversed the decisions, holding that a state has no constitutional obligation to license same-sex marriages or to recognize same-sex marriages performed out of state. The Supreme Court granted certiorari to review the case.

### THE SUPREME COURT DECISION

In a 5-4 decision, the Supreme Court overturned the Sixth Circuit Court of Appeals, relying on both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. The Fourteenth Amendment states, in part, that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In crafting the ruling, the Supreme Court stated that the right to marriage is fundamental under the Constitution and should apply with equal force to same-sex couples. The Supreme Court identified four bedrock principles supporting the conclusion: (1) personal choice regarding marriage is inherent in the concept of individual autonomy; (2) the right to marry supports a two-person union unlike any other in its importance to the committed individuals; (3) marriage safeguards children and families and thus draws meaning from related rights of childrearing, procreation and education; and (4) marriage is a keystone of our social order as highlighted by past cases and the Nation's traditions.

### EMPLOYEE BENEFIT IMPACT ANALYSIS

In recent years, there has been significant legislative, administrative and judicial action concerning the legal recognition of same-sex marriage at the federal and state levels of government. *Obergefell* serves as a milestone of a growing movement toward the legalization and recognition of same-sex marriage. As a result, same-sex couples who lawfully marry are now entitled to all of the same rights and responsibilities that have been afforded to opposite-sex married couples under state and federal law.

The ruling did not endeavor to address the impact on employee benefit plans (most notably, health and welfare plans), as that issue was not before the Supreme Court. Nonetheless, employers must consider what, if any, changes should be made in light of *Obergefell* and other guidance. Three issues will likely guide employers in this evaluation: (1) is the employer located in a state that already recognized same-sex marriages; (2) did the employer previously offer benefits to domestic partners or same-sex spouses; and (3) is the applicable plan insured or self-funded? In evaluating potential changes, the following areas will be of interest to employers:

- States Where Same-Sex Marriages Are Already Recognized. Employers located in a state that already recognizes same-sex marriages may feel relatively little impact from *Obergefell*, assuming such employer already offered spousal benefits to same-sex couples on the same basis as opposite-sex couples and such plans were subject to state law (e.g., an insured health plan where state insurance law required coverage of same-sex marriages).
- States Where Same-Sex Marriages Were Not Already Recognized. Employers located in a state that did not already recognize same-sex marriages will likely need to closely evaluate the impact of *Obergefell*. For example, if the employer maintains an insured medical plan, it will need to comply with changes to state insurance laws (such laws will likely need to be revised as well to comply with *Obergefell*).

- **Self-Funded Plans May Have Nondiscrimination Concerns.** For employers with self-funded plans not subject to state law, employers will want to consider the impact of federal and state nondiscrimination rules. For example, the Equal Employment Opportunity Commission ("EEOC") has taken the position that discrimination against employees on the basis of sexual orientation constitutes sex discrimination and therefore violates Title VII of The Civil Rights Act of 1964. An employer whose plan utilizes an eligibility definition that is restricted to opposite-sex couples could be at risk of an EEOC action.
- **Plans That Cover Domestic Partners.** Employers that previously offered benefits to domestic partners may experience little practical impact with respect to overall eligibility for benefits available to same-sex couples. However, such employers may need to revise the terms of such plans, policies or procedures to update eligibility provisions pertaining to the definition of marriage. In addition, such employers may want to evaluate whether it is necessary to continue to offer benefits to domestic partners, and how such changes would impact employees.
- **Fringe Benefits Other Than Health and Welfare Plans.** Issues regarding discrimination may also apply to other fringe benefits such as bereavement leave, discount programs, housing benefits, tuition reimbursement, etc. Thus, employers should review the eligibility provisions of those benefits for potential changes.
- **Tax Implications.** Employers will want to review how benefits provided to same-sex couples are treated for state tax purposes and consider whether tax treatment should be revised.
- **Concerns Pursuant to Other Rules.** Employers will need to evaluate how federal rules such as COBRA and FMLA apply to same-sex couples. Employers will also need to evaluate how to handle qualified domestic relations orders as well as beneficiary designations in retirement plans.

## PRACTICAL TAKEAWAYS

*Obergefell* marks a significant change in the American legal landscape regarding the rights of same-sex couples. Employers should take note of this decision and promptly evaluate whether changes to employee benefit plans and other policies and procedures applicable to employees are warranted. At the same time, employers should proceed cautiously with identified changes as it is likely that additional guidance will be forthcoming from applicable state and federal agencies tasked with implementing *Obergefell*.

Should you have questions, require further information or need assistance in evaluating the impact of *Obergefell* on your organization, please contact:

- Calvin R. Chambers at (317) 977-1459 or [cchambers@hallrender.com](mailto:cchambers@hallrender.com);
- Fred J. Bachmann at (317) 977-1408 or [fbachmann@hallrender.com](mailto:fbachmann@hallrender.com);
- William D. Roberts at (502) 568-9364 or [ebplans@hallrender.com](mailto:ebplans@hallrender.com);
- Nicholas S. Johnston at (317) 429-3618 or [njohnston@hallrender.com](mailto:njohnston@hallrender.com); or
- Your regular Hall Render attorney.