



JANET  
LETOURNEAU

ACFCI, is the compliance manager at WageWorks. She draws upon more than 20 years of experience with flexible benefits plans and tax laws to perform consulting services and monitor quality control.

LeTourneau is a frequent speaker to employer groups and conferences and was formerly on the board of directors for the Employers Council on Flexible Compensation (ECFC) and is a current member of the ECFC Technical Advisory Committee (TAC). She is the lead instructor for the Section 125 administrators training workshop.

LeTourneau was one of the first people in the country to earn the Advanced Certification in Flexible Compensation Instruction designation sponsored by the Employers Council on Flexible Compensation. She is a certified trainer in the ACFCI program.

LeTourneau can be reached at WageWorks, 4200 West 115 Street, Suite 300, Leawood, KS 66211. Telephone: 913-498-4157. Email: [jan.letourneau@wage-works.com](mailto:jan.letourneau@wage-works.com).

## The Benefits Brief...

# Supreme Court Rules On The Defense Of Marriage Act

What started out as a tax refund suit came to a dramatic and far-reaching conclusion on June 26, 2013, when the Supreme Court of the United States (SCOTUS) held that the definition of marriage contained in the Defense of Marriage Act (DOMA) is unconstitutional. SCOTUS stated, "DOMA is unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment."

*The ripples from this decision will be many and affect multitudes of people in the United States, not to mention the federal tax code.*

In addition to the Affordable Care Act's (ACA) mountain of changes, this decision provides even more work for employers, third party administrators, payroll vendors, accountants and lawyers for years to come.

### Background

DOMA created a federal definition of marriage. Prior to DOMA, the definition and regulation of marriage was treated as being within the authority and realm of individual states. Since a 1958 revenue ruling, the federal government followed state laws on marriage and cohabitation. Thus, all states inherently held rein over marriage and divorce issues, with some states even defining "common law" marriage arrangements. This ended with DOMA.

In 1996 President Bill Clinton signed DOMA into law. As a result of Section 3 of DOMA, the definitions of "marriage" and "spouse," for the purpose of constructing federal laws and regulations, excluded

same-sex partners. However, in early 2011, the Department of Justice announced that it would no longer defend the constitutionality of Section 3.

### Supreme Court's Ruling

SCOTUS' ruling was very narrow and found Section 3 of DOMA, which provided that only opposite-sex marriages were recognized for federal law, to be unconstitutional. However, Section 2 of DOMA (which allows a state to refuse same-sex marriages or to recognize the validity of same-sex marriages that were legally performed in another state) was not at issue in this case and, as a result, still stands.

SCOTUS reminded the federal government that whether any couple is legally married is determined at the state level. For decades couples have received marriage licenses from the state, had them duly signed and then submitted for recording purposes. The federal government and employers, for the most part, simply asked taxpayers to check a box—single or married—for submissions such as tax returns.

SCOTUS' ruling went on to say that DOMA violated basic due process and equal protection principles applicable to the federal government by writing inequality into the entire Internal Revenue Code. It is already estimated that more than 1,000 federal statutes and many more regulations will be affected by this one decision.

*The good news?* All states have laws related to marriage. However, states are

now divided on same-sex marriages. As a result, the ruling creates as many questions as it answers:

- ✓ Whether married same-sex couples are entitled to refunds on federal taxes previously paid.

- ✓ Whether a person may seek reimbursement for qualified expenses incurred by a same-sex spouse from flexible spending accounts (FSAs) and/or health reimbursement arrangements (HRAs) that were previously denied.

- ✓ What's the effective date for such determinations (e.g., the date on which the couple was married)?

- ✓ What implications does this ruling have on the administration of tax-advantaged benefits, such as a health FSA?

*These and similar questions must be addressed by the federal government and various state agencies.*

It is clear that the DOMA ruling will affect the federal tax arena as well as benefit and pension plan documents, health privacy, Social Security benefits, pension payments and taxes on inheritances.

#### Current State Treatment of Same-Sex Marriages

**The following states permit same-sex marriages to be performed:** CA, CT, DE (7/1/2013), IA, ME, MA, MD, MN

(8/1/2013), NH, NY, RI (8/1/2013), VT, WA and DC.

**The following states (and territory) do not permit same-sex marriage to be performed and do not recognize same-sex marriages that were performed in another state:** AL, AK, AZ, AR, FL, GA, HI, ID, IN, KS, KY, LA, MI, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WV, WI, WY and Puerto Rico.

**The following states recognize same-sex civil unions that offer some protections for same-sex couples, including same-sex couples married in other states:** CA, CO, HI, IL, NV, NJ and OR.

#### OPM Guidance

The first hint of the administration's application of this decision to the issue of benefits appeared on July 1, 2013, in an eight-page memorandum issued by the United States Office of Personnel Management (OPM). This memo is not official guidance on the subject. Rather, it is the application of the decision to one (albeit a very large and important) employer. The full memo is available at: <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf>.

The OPM memo immediately extends federal benefits to same-sex spouses, without regard to state of residence.

In the coming months and years the IRS will issue guidance on this and many more questions. They now have to sift through the entire federal tax code and determine whether the SCOTUS decision on DOMA requires changes. The IRS will also direct taxpayers if tax returns may be amended and refiled along with the time span of any retroactive tax action.

States that don't recognize same-sex marriages may not see much change at this time. However, *for multi-state employers, this will be a challenging time to adopt benefits and processes for some states, while retaining current practices for all other states.*

For benefit specialists, it's important to carefully follow the application of this ruling and any subsequent guidance that may be issued from government agencies to determine if any adjustments need to be made to code sections and plan documents. We'll continue to follow the application of the SCOTUS decision in future columns.

And as with any change, the journey starts one step at a time. Or, in this instance, one revenue ruling or regulation at a time. 🌐

*The information contained in this article is not intended to be legal, accounting, or other professional advice. We assume no liability whatsoever in connection with its use, nor are these comments directed to specific situations.*