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U.S. District Court in Massachusetts Rules Federal Defense of Marriage Act Unconstitutional

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On July 8, 2010, the U.S. District Court for the District of Massachusetts issued two decisions declaring Section 3 of the Federal Defense of Marriage Act ("DOMA") unconstitutional. Section 3 of DOMA, which was enacted by Congress and signed by President Clinton in 1996, provides that the federal government defines "marriage" as the legal union between a man and a woman and the term "spouse" refers to a person of the opposite sex who is a husband or wife.

This client alert provides a summary of these cases and the potential impact of these decisions. Employers should continue to follow these cases closely, as the decisions may have significant implications for their employee benefit plans and other policies and procedures.

Gill v. Office of Personnel Management

Gill v. Office of Personnel Management involved employees who worked for the U.S. Postal Service. The plaintiffs, who were legally married in Massachusetts, alleged that they had been denied certain federal marriage-based benefits in violation of the equal protection principles embodied in the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Each plaintiff or his or her spouse made at least one request to receive a federal benefit that was available to heterosexual married employees (*e.g.,* health benefits, Social Security benefits and tax benefits). The government agencies denied each of these requests, citing DOMA's mandate that the federal government recognize only those marriages between a man and a woman.

Judge Tauro of the Massachusetts U.S. District Court granted summary judgment with respect to each plaintiff's claims (except for one whom the court held lacked standing to bring suit) on the basis that DOMA violated the core Constitutional principles of equal protection because the government failed to establish a rational relationship between the prohibition on same sex marriages and a legitimate government objective.

Commonwealth of Massachusetts v. U.S. Dept. of Health and Human Services

The companion case to *Gill -- Commonwealth of Massachusetts v. U.S. Dept. of Health and Human Services* – which was filed by Massachusetts Attorney General Martha Coakley, challenged the validity of DOMA by alleging that Congress overstepped its authority and undermined the states' efforts to recognize marriage between same sex couples. The Massachusetts Attorney General argued that DOMA is unconstitutional because it intrudes on states' exclusive authority with regard to determinations of marital status and forces the Commonwealth of Massachusetts to discriminate against its citizens in the operation of certain state programs that, as a result of DOMA, must be made available only to heterosexual couples (*e.g.,* burial of Massachusetts veterans and their spouses in state cemeteries for veterans, and participation in the Commonwealth's Medicaid program (MassHealth)).

The district court held that DOMA violates the Constitution's Spending Clause insofar as it "imposes an unconstitutional condition on the receipt of federal funding" and violates the 10th Amendment because it "plainly intrudes on a core area of state sovereignty."

Potential Impact of the Decisions

The immediate question that comes to mind is whether the federal government and private employers are now required to follow the district court's decisions in these cases. For example, must Social Security survivor benefits be provided to a same sex spouse who is married in a jurisdiction (such as Massachusetts) where same sex marriages may legally be performed, and must such couples be permitted to file joint federal tax returns? Similarly, must a private employer provide a same sex spouse with the right to receive a qualified joint and survivor annuity under its retirement plan, and must employers allow employees to take FMLA leave to care for an ill same sex spouse?

At press time, without an appeal having been filed, it is possible that the federal government (and other affected parties) might follow the decisions within that jurisdiction unless a stay is in place, in order to avoid exposing themselves to potential sanctions and additional litigation. If the decisions are not currently stayed, the decisions technically are "good law" for the entire country, though as a practical matter the government could decide not to follow them outside of that jurisdiction (without the risk of being in contempt of court). If the government appeals the rulings, it would seem that the government would in all likelihood seek a permanent stay (pending the outcome on appeal) so that DOMA will continue to be valid and enforceable during the course of the litigation.

The most likely course for this litigation is that an appeal will be filed and the decisions will be stayed pending appeal, since the decisions result in conflicting obligations throughout the country (depending on whether a state permits same sex marriage) and the cases involve an issue of great significance to the country. Perhaps the cases will make it to the U.S. Supreme Court for resolution following appeal.

For employers, the best course at the moment is to adopt a “wait and see” approach.

The Repeal of Section 3 of DOMA

If these decisions lead to the repeal of Section 3 of DOMA, federal law would presumably defer to state law to determine whether the definition of “spouse” and “marriage” include same sex spouses. This would have a tremendous impact on the rights of employees and their spouses under a variety of federal tax and employee benefit laws. While some of the federal tax implications are obvious, such as same sex spouses having the option to file joint tax returns, other changes are not as apparent, such as the impact of federal corporate and partnership tax provisions regarding the deemed ownership rules applicable to spouses.

Some of the significant changes for employers with regard to their employee benefits are:

- Recognition of same sex spouses for purposes of determining rights to surviving spouse annuities or death benefits under their retirement plans.

- Provision of health and other benefits to same sex spouses on the same basis as opposite sex spouses including with regard to tax treatment and participation in cafeteria plans, FSAs and HSAs.
- Extension of full COBRA rights to same sex spouses as “qualified beneficiaries” under COBRA.
- Provision of FMLA leave to employees to care for an ill same sex spouse.

Employers should follow the progress of these cases and begin to consider the potential impact on their employee benefit plans and other employment policies.

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