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UPDATE: The United States Department of Labor Issues Guidance Regarding Same-Sex Marriages and its Impact on Employee Benefits

By Okechi C. Ogbuokiri, Esq.

The Facts

Two months ago, in the July 2013 edition of Porzio's [Employment Law Monthly](#) we discussed the United States Supreme Court's landmark decision in *United States v. Windsor* in which it struck down as unconstitutional Section 3 of the Defense of Marriage Act ("DOMA"). Section 3 of DOMA specifically defined "marriage" as a lawful union between one man and one woman as husband and wife. The Court held that Section 3 violated the basic due process and equal protection rights afforded under the Fifth Amendment of same-sex couples who are legally married under state law.

Despite the Court's monumental decision, which requires the recognition and acceptance of state definitions of marriage, the Court did not provide any guidance as to the interpretation of the relevant federal laws impacted. Fortunately, on September 18, 2013, the United States Department of Labor issued guidance as to the interpretation of the Court's definition of "spouse" and "marriage" and its affect on employee benefit plans governed by the Employee Retirement Income Security Act ("ERISA"). The Department of Labor, which has the authority to issue regulations, rulings and opinions regarding ERISA and the Internal Revenue Code, explained that, under Title I of ERISA,

the term 'spouse' will be read to refer to any individuals who are lawfully married under any state law, including individuals married to a person of the same sex who were legally married in a state [or foreign jurisdiction] that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages. Similarly, the term 'marriage' will be

read to include a same-sex marriage that is legally recognized as a marriage under any state law.

DOL Technical Release 2013-04. The significance of this guidance, and more importantly the Court's decision, is that it requires employee benefit plans to utilize the "place of celebration of a marriage" rather than the "state of domicile" to make determinations regarding an individual's eligibility of benefits. This will provide employers with more ease in administrating employee benefit plans and allow for the creation of more uniform rules for larger employers with employees in several states.

The Department of Labor notes that the terms "spouse" and "marriage" do not apply to or include individuals who are in a relationship that is recognized by a state, for example, a civil union or domestic partnership, but do not consider these relationships within the state definition of marriage. This restriction applies to both opposite-sex and same-sex couples who are engaged in a civil union or domestic partnership, despite any recognition of marital/spousal rights afforded to such couples under state law. For example, a same-sex couple that is domiciled in New Jersey (a state that does not recognize same-sex marriages) and married in New York (a state that recognizes same-sex marriages), would be entitled to employee benefits governed by ERISA. However, if the same couple only entered into a civil union with each other in New Jersey, an employer would not be required to recognize such rights to the same benefits.

The Department of Labor also issued guidance in August explaining that the term "spouse," as seen in the Family Medical Leave Act, will include individuals of same-sex marriages who are married in states that recognize such marriages.

Bottom Line

With the Department of Labor's view on the reach of the Windsor decision, employers, with the assistance of their attorneys and plan administrators, can now begin to revise existing benefit plan documents, such as pension and health care plans, to bring them up to date with the recent case law. With the benefit of creating more uniform policies, employers will reduce any errors in the implementation of, or inconsistencies in, the application of federal employee benefit laws.

The Porzio Employment Law Monthly is a summary of recent developments in employment law. It provides employers with an overview of the various legal issues confronting them as well as practical tips for ensuring compliance with the law and sound business practices. This newsletter, however, should not be relied upon for legal advice in any particular matter.