

# DOMA Repeal Affects Employee Benefits

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In a landmark case that made plenty of headlines this summer, the U.S. Supreme Court struck down the part of the Defense of Marriage Act (DOMA) requiring same-sex spouses to be treated as unmarried individuals under federal law. Going forward, the decision will likely have a major impact for both employers and employees. Here are several key areas to focus on.

**Health insurance:** Generally, an employee is not taxed on health insurance provided by an employer or amounts received as reimbursement for medical care expenses. The exclusion is available for the medical expenses of the employee, his or her spouse, and dependents. As a result of the DOMA ruling, there would be no tax on coverage for a same-sex spouse.

**COBRA coverage:** Under COBRA (short for the Consolidated Omnibus Budget Reconciliation Act), employees may have the right to continue health insurance after termination of employment. A qualified beneficiary can choose to pay for continuation of coverage. Generally, a qualified beneficiary is the spouse or dependent child of the covered employee.

**Pension plan annuities:** A pension plan and certain other qualified plans are generally required to pay a married participant's benefits in the form of a qualified joint and survivor annuity (QJSA) unless the participant elects otherwise. If the participant is married, the spouse must consent in writing to the participant's election as to the QJSA.

**Spousal consent for qualified plan payments:** A participant in a defined contribution plan, such as a 401(k) plan, can choose to leave the remaining balance in the account to any beneficiary. However, if the participant is married, the amount can be left to a non-spouse beneficiary only if the participant's spouse consents to this in writing.

**Other plan aspects:** Furthermore, the ability of a plan participant to take certain actions is limited if the plan participant is married. For example, if a qualified plan is subject to survivor annuity requirements, the participant must obtain spousal consent for any plan loan to a married participant if more than \$5,000 of the account balance is used as security for the loan. On the other hand, the required minimum distribution (RMD) rules are generally more liberal for defined contribution plan participants who are married than they are for those who aren't married. Thus, same-sex couples may benefit regarding the RMD rules.

**QDRO eligibility:** A spouse's pension benefits may be covered by a qualified domestic relations order (QDRO). With a QDRO, a spouse has the right to share in the pension benefits of the other, and the

spouse who receives the benefits is subject to tax. Without a QDRO, the spouse who earned the benefits would still be taxed on them, even if they are paid out to the other spouse.

It will take a while to absorb all the implications of the new Supreme Court ruling on DOMA. It is expected that the government will provide additional guidance. In the interim, do not hesitate to contact Henry & Horne, LLP for assistance.

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