



## Update For Retirement Plans Post-Windsor

Insights

8.01.14

Now that some of the dust has settled on the U.S. Supreme Court's decision in *U.S. v. Windsor*, employers who haven't done so already should take immediate steps to review their retirement plan documents and administrative practices to determine if any changes or amendments are needed.

The IRS deadline for amendments to comply with the *Windsor* decision is December 31, 2014. As background, the Supreme Court's decision found unconstitutional the portion of the Defense of Marriage Act that barred the federal government from recognizing same-sex marriages.

For employers, this means that any IRS retirement-plan-qualification rule, or any provision of ERISA that applies to your retirement plan based on a participant's marital status, must apply to a same-sex marriage. An amendment is generally only required if your plan's terms are inconsistent with the *Windsor* decision or related guidance (e.g., your plan defines "spouse" as an opposite-sex individual or determines marital status based on a state law that doesn't recognize same-sex marriages).

The *Windsor* decision was released and effective on June 26, 2013. For the period beginning June 26, 2013, and ending September 15, 2013, a qualified plan could limit recognition of same-sex marriage to a participant who lived in a state that recognized same-sex marriage ("place of domicile"). Beginning September 16, 2013, retirement plans were required to apply the "state-of-celebration" rule.

Under the state-of-celebration rule, individuals are considered married if the marriage was validly entered into in any state or foreign country, regardless of where they live. Your retirement plan needs an amendment if your plan's definition of spouse does not comply with *Windsor*. In addition, if you administered the plan using the place of domicile rule in 2013, your plan or administrative procedures should be amended to reflect the use of that rule.

There are numerous retirement-plan provisions that are impacted by the *Windsor* decision and an employer must consider same-sex spouses when applying the:

- Qualified Joint and Survivor Annuity and Qualified Preretirement Survivor Annuity requirements applicable to defined benefit plans and defined contribution plans with annuities;

- beneficiary designations and spousal consent requirements to designate a non-spouse beneficiary;
- spousal-consent rules for hardship and in-service distributions or loans;
- rollover rules allowing a spouse beneficiary of a deceased participant to roll over plan benefits to an IRA or other eligible retirement plan;
- QDRO rules for a division of marital property under state domestic relations law; and
- spousal-attribution rules which treat stock owned by a spouse as owned by a participant for purposes of applying certain nondiscrimination and controlled group rules; or when
- determining whether the participant has a hardship such as medical, funeral, or tuition expenses for a spouse;

There are still many open issues regarding the application of *Windsor* on an administrative level. Be cautious in crafting administrative policies to ensure the guidelines are properly implemented and administratively consistent.

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