

EMPLOYMENT SERVICES ALERT

7/27/15

A Practical Guide for Employers Following *Obergefell v. Hodges*

Although perhaps not unexpected, the United States Supreme Court's ruling on same-sex marriage (*Obergefell v. Hodges*, 135 S.Ct. 2584 (June 26, 2015)) still has the potential to throw employers for a loop. Below are some issues to consider in light of this ruling.

- **Health plans.** While your carrier should provide you with definitive guidance, you should note that health and other forms of insurance that your company offers are probably the areas that will need the most work. A same-sex marriage is now on equal footing with a traditional marriage, and same-sex couples should be provided with the same paperwork and procedures, both at the time of the marriage (enrollment), for change in status events, and in the event of any divorce (COBRA). One area that was not addressed by *Obergefell* was the status of marriages entered into prior to the decision that were legal in the state it took place, but were not in the current state of residence. Under the Full Faith and Credit Clause, those marriages are now legal in all states. However, the IRS has not addressed as to what is the date of the "qualifying event" for enrollment purposes.
- **Employee Handbook.** To the extent you have policies that include treatment or mention of "spouse," your managers will need to be trained that such language now includes same-sex spouses. Examples of these types of policies include bereavement leave, non-FMLA medical leave policies, or benefits such as free or discounted services.
- **Family Medical Leave Act.** The Department of Labor previously acted to include same-sex spouses who had been legally married (whether or not they currently lived in a state where same-sex marriage was legal) in the definition of "spouse" for purposes of leave under the FMLA (the "place of celebration" rule). The *Obergefell* ruling does nothing to change that, and same-sex spouses must be treated the same as non-same-sex spouses for purposes of leave to care for a spouse with a serious health condition.
- **Same-sex unmarried couples.** To the extent that you previously afforded benefits to those who could demonstrate a committed relationship akin to marriage (whether opposite sex or same sex), you should re-evaluate that now in the wake of *Obergefell*. As there is no longer a barrier to those in same-sex relationships being married, employers may conclude that it is no longer necessary to afford benefits to those in relationships outside of marriage, whether same-sex or not.

Please do not hesitate to contact any of the following Roetzel attorneys should you have any questions regarding this topic.

Doug Spiker
Practice Group Manager,
Employment Services
216.696.7125 | dspiker@ralaw.com

Karen Adinolfi
330.849.6773 | kadinolfi@ralaw.com

Matt Austin
614.723.2010 | maustin@ralaw.com

Aretta Bernard
330.849.6630 | abernard@ralaw.com

Robert Blackham
216.615.4839 | rblackham@ralaw.com

Lindsay Bouffard
614.723.2026 | lbouffard@ralaw.com

Eric Bruestle
513.361.8292 | ebruestle@ralaw.com

Denise Hasbrook
419.254.5243 | dhasbrook@ralaw.com

Paul Jackson
330.849.6657 | pjackson@ralaw.com

Doug Kennedy
614.723.2004 | dkennedy@ralaw.com

Alex Kipp
216.820.4204 | akipp@ralaw.com

Nathan Pangrace
216.615.4825 | npangrace@ralaw.com

Marcus Pringle
216.696.7077 | mpringle@ralaw.com

Emily Wilcheck
419.254.5260 | ewilcheck@ralaw.com