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**Supreme Court Decisions on Same Sex Marriage
To Impact Business Entities, Employers and Individuals**
*New definitions of “spouse” and “marriage” to affect numerous statutes
pertaining to leave, benefit, and tax laws*

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Today’s Supreme Court decisions will have a major impact upon business entities, employers and individuals in New York, New Jersey, and several other states including California, due to the change of the definitions of “spouse” and “marriage” under federal law that will affect over 1,000 federal statutes, including leave, benefit, and tax laws.

On June 26, 2013, the United States Supreme Court issued two major decisions on same-sex marriage, United States v. Windsor, No 12-307, 570 U.S. ____ (2013), and Hollingsworth v. Perry, No. 12-144 (2013). These decisions will have a profound impact on both tax law and on employers in the twelve states and Washington D.C. in which same-sex marriage is already legal, including New York, as well as California where same-sex marriage will become legal. Based on Hollingsworth v. Perry, the Court’s decision will legalize same-sex marriage in California. Under United States v. Windsor, the Defense of Marriage Act’s provision, which restricted the definition of “marriage” and “spouse” to heterosexual marriages, has been struck-down as unconstitutional based on the due process and equal protection provisions of the Fifth Amendment of the U.S. Constitution. There is now no definition of “marriage” or “spouse” under federal law, and the likely analysis would hold that the relevant state law would apply. In short, under federal law in the twelve states including New York where same-sex marriage is legal, and California where it will become legal, same-sex married couples will receive federal benefits. Employers in the affected states including New York, should immediately examine their leave policies and various benefits plans, and consult with counsel as appropriate.

The following are some of the most important statutes that are affected by the Court’s ruling in the affected states:

Family Medical Leave Act

- This would mean that in states such as New York where same-sex marriage is legal, under the Family Medical Leave Act, which entitles employees to up to a total of 12 weeks of leave during any 12 month period for the serious health condition of an employee or certain family members, employees would be able to take family leave to care for a same-sex husband or wife.



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COBRA

- Similarly, this would mean in states where same-sex marriage is legal, such as New York, same-sex married couples would be entitled to additional medical and pension benefits and employers would have to adjust their benefit plans accordingly. One example is the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), which allows a “qualified beneficiary” to stay on their partner’s plan after a “qualifying event” such as the employee losing his or her job. In states where same-sex marriage is legal, the state definition would appear to apply under the federal common law, and “qualified beneficiary” would include same-sex spouses.

ERISA

- ERISA retirement and pension plans which define “spouse” based on federal law now have a different definition for employees in states where same-sex marriage is legal. This could have an important impact on the liabilities of such plans and employers in the affected states should immediately review their retirement and pension plans.

Tax Consequences

- Federal tax consequences are likely the most important consequence of the U.S. Supreme Court decision, and these tax consequences affect employers. For example, currently under federal law, same-sex employees are not allowed to extend their employer based health insurance to their partner without tax repercussions, as the coverage is considered income for the same-sex partner. Under the analysis explained above, in states where same-sex marriage is legal, this income would no longer be considered taxable income for the same-sex partner. Employers may need to allow their employees to change their health care selection to take advantage of the tax advantages that same-sex married couples would receive.

Tax Impact/Estate Planning

- The decision has a profound impact on tax issues for individuals as well as companies. In fact, Windsor is a tax case – by not recognizing the marriage between Edith Windsor and Thea Spyer, the IRS disallowed the marital deduction for federal estate tax purposes when Thea died and asserted a \$363,000 estate tax deficiency. The Court’s decision allows the marital deduction and eliminates the tax imposition. Not only does this impact the federal estate tax, it also impacts the federal gift tax and the federal income tax with regard to provisions (most of them in the form of tax relief) applicable to married couples. It also impacts the New Jersey Estate Tax. Even though New Jersey generally treats domestic partners the same as married couples, as the New Jersey Estate Tax is derivative of the federal estate tax, New Jersey did not recognize a marital deduction for New Jersey Estate Tax purposes for domestic partners. That position is now likely to come under further scrutiny and possible re-consideration.



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