

# Marriage and Domestic Partners

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Important Changes to Federal and State  
Law For 2014





## **Effects of Windsor: Benefits Affected**

- **Tax- Qualified Retirement Plan**
- **Health Plans**
- **COBRA Availability**
- **Cafeteria Plans**
- **Tax-favored Fringe Benefits**

# Effects of Windsor: Agency Interpretation

## •IRS- Treatment of Same Sex Marriages

– In Notice 2014-19 (April) IRS announced:

- Plans not required to recognize same sex marriages prior to June 26, 2013
- Plans not required to have adopted the “state of celebration” rule until September 26, 2013
- Plans are permitted to recognize same sex marriages prior to June 26, 2013
- Plans with terms inconsistent with *Windsor* must be amended no later than (i) date plan normally would have to be amended or (ii) 12/31/2014

## **Effects of Windsor: Agency Interpretation**

- **DOL- For ERISA purposes, “State of Celebration”**
  - DOL provides in Technical Release 2013-04 that for ERISA purposes, the DOL will also recognize a same-sex couple as legally married if married in a state that allows for same-sex marriages
  
- **But Note: for FMLA purposes, DOL recognizes “State of Residence.”**

## **Effects of Windsor: Tax-Qualified Retirement Plans**

- **Same-sex spouses now have the right to:**
  - Provide spousal consent to benefit payments to non-spouse beneficiaries.
  - A qualified joint and survivor annuity from a money purchase pension for a defined benefit pension plan.
  - Provide spousal consent to early payment of benefits and plan loans.
  - Division of participant retirement benefits in a divorce or legal separation proceeding pursuant to a qualified domestic relations order.

## Effects of Windsor: Tax-Qualified Retirement Plans

- **Same-sex spouses now have the right to:**
  - More favorable rules for tax-free rollovers of plan distributions.
  - Hardship distributions- Qualifying expenses that apply to spouses now include same-sex spouses (Medical, Tuition and Funeral Expenses).

## **Effects of Windsor: COBRA Coverage**

- **If an employee's same-sex spouse is covered under the Employee's group health plan immediately prior to a COBRA-qualifying event, the spouse is now entitled to elect COBRA coverage;**
- **An employee who previously elected individual coverage under COBRA has the right to change the coverage election at the time of open enrollment.**

## Effects of Windsor: Mandate Health Coverage

- In the case of group health insurance, employers generally may define the type of relationships eligible for coverage.
  - No federal law currently prohibits discrimination on the basis of sexual orientation or marital status in offering benefits.
  - Insured plans may be subject to state requirements that the policy provide certain coverage/ benefits to same-sex spouses.
  - If a state requires insurance carriers to provide coverage/benefits to same-sex spouses or domestic partners, an employer that purchases a policy subject to those requirements will become contractually bound to provide those benefits.
  - State non-discrimination law concerns, and upcoming litigation, may influence employers to expand coverage to same-sex spouses if it wasn't previously provided, despite no controlling mandate to do so.



## **Effects of Windsor: Federal Tax Treatment**

- **The definition of spouse under the Internal Revenue Code affects federal tax treatment of:**
  - The cost of group health coverage and benefit payments; pre-tax contributions under a section 125 cafeteria plan; and certain working condition fringe benefits.
  - Eligible expenses for same-sex spouses may be reimbursed from health FSAs, HRAs, and HSAs.
  - Favorable tax treatment applies regardless of the couple's state of residence.
  - Ruling does not apply to domestic partnerships, civil unions or other formal relationships recognized under state law.

## Changes to Washington Law Effective June 30, 2014

2 notices have been sent by Secretary of State to all registered domestic partnerships, notifying them that:

- On June 30, 2014, many, but not all, state registered domestic partnerships will be converted to marriage.
- **Same-sex couples with both under 62 will be converted to marriage.**
- Only Washington **state registered domestic partnerships** will be converted.

## • Exceptions to Automatic Conversions under Washington Law

- If a domestic partnership is a **heterosexual couple under 62** which filed a state registered domestic partnership, it is an invalid partnership, as the law did not allow registration.
- If the couple is a **heterosexual or same-sex couple and one of them is 62 or over**, the law will **NOT** allow you to convert a state registered domestic partnership to marriage. Such couples may choose to marry.

## Washington Secretary of State Contact Information

- If you have any questions regarding the conversion of state registered domestic partnerships, visit the Secretary of State's frequently asked questions at <http://www.sos.wa.gov/corps/domesticpartnerships/faq-2014.aspx>
- Secretary of State information phone number is 360.725.0377



## **Effects of Windsor and Washington Law: What to Do Now**

- Employers should review all benefit plans and policies to determine where the term “spouse” is used and how it is defined.
- Determine what types of same-sex spouse benefits you want to provide where there is flexibility to do so.
- Review/modify domestic partner policies/coverage.
- Identify participants who have same-sex spouses.
- Make changes to payroll procedures where necessary.
- Notify employees if domestic partnerships status has changed to talk with your HR about possible benefit changes available\*



## Notice to Employees

**As of June 30, 2014 Washington Registered Domestic Partnerships in most situations will be converted to marriages. This may have important consequences for you and your partner (spouse) with respect to our employee benefits. You should immediately contact Human Resources if you believe that your domestic partnership will be converted to a marriage on June 30 or if you have already married your domestic partner and have not notified Human Resources.**



# Disclaimer

This presentation provides general information regarding its subject and explicitly may not be construed as providing any individualized advice concerning particular circumstances. Persons needing advice concerning particular circumstances must consult counsel concerning those circumstances. Indeed, health care reform law is highly complicated and it supplements and amends an existing expansive and interconnected body of statutory and case law and regulations (e.g., ERISA, IRC, PHS, COBRA, HIPAA, etc.). The solutions to any given business's health care reform compliance and design issues depend on too many varied factors to list, including but not limited to, the size of the employer (which depends on complex business ownership and employee counting rules), whether the employer has a fully-insured or self-funded group health plan, whether its employees work full time or part time, the importance of group health coverage to the employer's recruitment and retention goals, whether the employer has a collectively-bargained workforce, whether the employer has leased employees, the cost of the current group health coverage and extent to which employees must pay that cost, where the employer/employees are located, whether the employer is a religious organization, what the current plan covers and whether that coverage meets minimum requirements, and many other factors.

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