

The impact of marriage equality on your benefit plans and employees



The U.S. Supreme Court's historic ruling in *Obergefell v. Hodges* granted equal marriage rights to same-sex couples in all 50 states. With this ruling, more same-sex couples are now entitled to the same financial, tax and estate planning benefits as opposite-sex couples, including under employer-sponsored benefits. As a result of the decision, complications and inconsistencies among plans in states that previously did not recognize same-sex marriages will be largely eliminated and the expansion of spousal benefits could help improve retirement outcomes for many of your employees.

Since you may have questions about what this decision means to you as a plan sponsor, and the actions you may need to take to comply with the ruling, we have prepared this fact sheet to help you better understand the ruling, its implications and regulatory requirements.

The road to equality

The precursor to the *Obergefell* ruling was the June 2013 *U.S. v. Windsor* decision in which the Supreme Court struck down the portion of the Defense of Marriage Act (DOMA) that prevented the federal government from refusing to recognize legally married same-sex couples. The *Windsor* decision opened the door to more than 1,000 rights and benefits available to opposite-sex couples and their children at the federal level alone.

As a consequence of *Windsor*, the IRS and Department of Labor provided guidance to help bring retirement plans into compliance. But while *Windsor* granted federal recognition to same-sex marriage, it did not require states themselves to solemnize same-sex marriage nor to recognize marriages performed in other states. This created particular administrative challenges for employers in states that did not recognize marriages. Additionally, because of statutory language, the Social Security and Veterans Affairs Administrations were unable to provide equal benefits to married same-sex couples living in non-recognition states.

This all changed on June 26, 2015, when the Supreme Court held in *Obergefell* that same-sex couples have the right to marry under the Fourteenth Amendment to the U.S. Constitution. The Court further held that there is no basis for a state to refuse to recognize a lawful same-sex marriage performed in another state merely because the marriage is between two people of the same sex. Simply stated, state laws that banned same-sex marriage became invalid.



What does the ruling mean for plan sponsors?

The ruling simplifies the administration of retirement and other employee benefit plans with regard to same sex marriage. However, you may need to take the steps listed below to ensure you are in compliance with the ruling and your employees understand the benefits to which they are entitled—particularly in states that had not previously recognized same-sex marriages.

- **Plan and form revisions:** Review your employee benefits plans to determine whether you need to make plan design and document changes, update beneficiary and other forms, implement changes to state tax calculations or make other revisions to ensure same-sex marriage benefits are in place.
- **Provide financial education and communicate key benefit changes:** Impacted employees and their spouses may now be entitled to additional benefits. For example, the Employee Retirement Income Security Act (“ERISA”) and the Internal Revenue Code of 1986, as amended, offer spousal rights and apply certain restrictions that may impact your employees’ retirement distribution options.

Additionally, beneficiary designation forms may need to be reviewed and updated by your employees to ensure that benefits go to their intended beneficiaries. Older same-sex couples that marry may especially need to be reminded of these changes as they may have been together for many years prior to the ruling.

Work with your retirement and other benefits providers to ensure same-sex couples are aware of how these changes can help improve their financial well-being and how to take advantage of them. [Click here](#) for an article detailing the implications of the ruling for your employees or go to <https://www.tiaa-cref.org/public/advice-guidance/estate-planning-for-same-sex-couples>.

- **Encourage your employees to seek advice:** The *Obergefell* and *Windsor* rulings have a significant impact on same-sex married couples. Seeking advice from a financial or other professional could help clarify many of the tax, financial, estate planning, healthcare, retirement planning or other changes that may affect your employees. An advisor can help employees prepare an up-to-date retirement plan that incorporates these new changes.
- **Highlight access to Social Security benefits:** Although Social Security benefits are administered at the federal level, the law of the state of residence still determined whether same-sex married couples were entitled to the same Social Security benefits as opposite-sex couples. Even after *Windsor*, same sex couples residing in states that did not recognize same sex marriages were in a precarious situation. Now, all married couples are entitled to the same benefits. Same-sex spouses may wish to re-evaluate their options to claim Social Security benefits to determine whether they can boost their retirement income.

Additional implications of the ruling

Obergefell has not resolved every issue that grew out of the *Windsor* ruling. Perhaps the most important question that remains to be answered is whether either ruling is to be applied retroactively? We will continue to monitor developments closely and keep you informed of further guidance or announcements.

Plan sponsors and participants should consult with their ERISA or tax legal counsel concerning these rules and the information provided in this fact sheet. TIAA-CREF does not provide legal advice.



Plan sponsor checklist: Complying with same-sex marriage equality



The following checklist provides you with seven steps to consider as you review your employee benefits. It can help ensure that you are taking the necessary actions to comply with the *Obergefell* decision and are providing your employees with the financial education, guidance and advice they need.

1. Apply the same procedures and documentation requirements for marital status changes as those used for opposite-sex spouses.

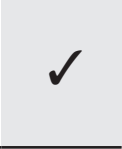
2. Update the language across your retirement and employee benefits plan documents and Summary Plan Descriptions to make sure spousal rights and definitions are properly reflected.

- The definition of marriage should include same-sex couples across all your documents.



3. Review your benefit plan forms to make sure they have all been updated and are in compliance.

- These forms should include those used for beneficiaries and distributions, spousal consents, hardship withdrawals, divorces, rollovers and minimum distribution requirements, among others.



4. Review your employer withholding procedures and payroll systems.

- Pay special attention to state-related tax withholding procedures and premium contributions for various benefits which may require updating. They should now be the same for same- and opposite-sex couples.



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5. Remind employees they are entitled to the same benefits as opposite-sex spouses and should carefully review all of their benefits elections and withholdings.

- Many of these benefits overlap with the benefit form changes listed in item number three. ✓
- Newly recognized same-sex marriages qualify as life events and employees can make benefits changes immediately. ✓
- Employees may need to update or change their beneficiary designations and spousal consents. ✓

6. Work with your retirement plan provider and advisor to make sure your employees are receiving the advice and guidance they need.

- Financial education is integral to helping same-sex spouses understand the many implications of the Obergefell ruling. But remember, comprehensive education programs can help improve the financial well-being of all your employees. ✓

7. Encourage employees to revisit their retirement planning strategy.

- Access to spousal benefits may help improve their retirement outlook and readiness. ✓
- Social Security: Same-sex couples regardless of the state they live in are now eligible for full Social Security benefits and joint filing strategies. This could result in an increase in retirement income and affect established retirement plans. ✓



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