

What are the implications of the Defense of Marriage Act (DOMA) for you as an employer?

Legally married same-sex spouses will be treated as married for federal tax purposes. This means that all legally married same-sex couples can pay insurance premiums with pre-tax dollars (assuming the employer allows opposite-sex married couples to pay premiums with pre-tax dollars) This is unlike domestic partners or couples in a civil union who must continue to pay premium on an after-tax basis and have imputed income applied to the employer share of the partner's premium. These new regulations apply to legally married same-sex couples only and apply regardless of the state of residence. The taxability of benefits at the state level will vary based on the laws of each state.

While the Departments stated that the "place of celebration" rule will apply, under current law employers are not obligated to extend coverage to same-sex spouses or spouses in general. There is no required definition of spouse for purposes of benefits under federal law. This means state law and the employee benefits plan's definition of spouse must be looked to in determining whether or not a same-sex spouse must or may be covered.

While we have received some guidance, the implications of the DOMA decision are still unclear. The following illustrates some of the issues' complexity and why there are still questions left unanswered.

Fully-Insured Plans

Fully-Insured plans will need to understand the definition of a legal spouse in the state the plan is written. Employers should review state insurance law, insurance policy language and plan documents for agreement in the definition of a covered spouse and any necessary changes. Generally, insurance carriers will apply their standard dependent language to all plans. Some carriers will include same-sex legal spouses based on the state of residence of the employee and some will base this on the state of celebration. Carriers that write plans in states that recognize same-sex marriage are more likely to include same-sex spouses under their contracts. Depending on the insurance carrier and employer size, there may be flexibility in the definition of spouse.

Self-Funded Plans

Self-Funded employers should determine whether or not they wish to extend coverage to same-sex spouses and review their plan's definition of spouse to ensure that the definitions align with their intent. Additionally, self-funded employers should verify how same-sex spouses will be treated under any stop loss policy.

Health Reimbursement Arrangements and Flexible Spending Accounts

The implications for health reimbursement arrangements and flexible spending accounts are still surfacing. If the plan covers same-sex spouses, their expenses will be reimbursable without tax consequence. However, employers must carefully evaluate their plan language and the definition of spouse to make sure it conveys their coverage intention. A definition of legally married spouse, would now include both same-sex and opposite-sex spouses.

While recent guidance answers certain questions, there are still many questions left unanswered. Clients should seek legal counsel due to limited guidance and continued evolution of the law. Your HORAN Account Manager can help you determine state requirements, your insurance policy definition of spouse and your ability to customize policy definitions. Ohio, Kentucky and Indiana do not currently recognize same-sex marriage.

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