

When the Supreme Court struck down the defense of marriage act's exclusion of same-sex marriages from recognition under federal law, it may have set in motion a wave of needed revisions to your restaurant's group benefit plans. This ruling effectively changes over 1000 federal laws in one sweeping move. How might these changes affect your employee benefits programs? Have you calculated the impacts of these changes on your restaurant?

While on the surface, this ruling appears to clarify the federal government's stance on fair treatment for same-sex couples, on the other hand the conflict between this ruling and the many and varied state laws on this issue certainly creates a new level of confusion. So while we have the certainty that employer provided benefits, such as health insurance, can be offered to same-sex spouses in states where they can legally wed each other, without the cost of this benefit being taxable to the employee, many more questions are now raised. For instance, if you have withheld taxes for a same-sex couple benefit that was previously taxable, are you now compelled to calculate the tax refund for those employees and return that money? If so, how to collect from the IRS to pay this refund?

Other questions abound. What if you have same-sex employees who are legally married in one state but work for your restaurant in a state where same-sex marriages are not permitted by law? What amendments do you need to make to 401k or retirement plans that your restaurant sponsors in order to be in compliance with this ruling?

As the relevant governmental agencies such as the IRS and the U.S. Department of Labor have yet to comment publicly on this ruling, it is still possibly too early to begin making changes to your benefit programs. It is safe to assume that these agencies, once they do begin to establish changed rules to deal with this major change, will allow some time for communication and compliance with the new rules. But you need to have some system in place to keep on top of these changes when they come in and to make sure that you meet any deadlines imposed for changes and communication of changes to your employees who receive these benefits.

If your restaurant operates in multiple different states, then your imperative in all of this will be to discover which state's marriage laws will control your obligations on these benefits and tax issues. At this time we don't know whether federal benefit laws will default to the statutes for the state in which your restaurant is domiciled, the state in which the couple was married, or the state in which the employee works. And if you have employees that might perform work for you in multiple states, then this becomes even more confusing. In the short term it is expected that regulators are going to have a tough time figuring out the answers to these questions.

Here's a short list of some of the areas that you may want to keep an eye on for clarification from the appropriate regulators in the future:

- Eligibility for joint and survivor annuities, hardship distribution and early deferral of required minimum distributions under pension plans governed by ERISA rules.
- Tax exemptions for group health plan contributions.
- Mandatory 401k beneficiary designations and right to consent.
- Guaranteed unpaid leave for emergencies involving married spouses under the Federal Family and Medical Leave Act.
- COBRA continuation health care coverage
- ERISA-governed health and retirement benefits equal to benefits provided to same-sex spouses.
- Protection from workplace discrimination on the basis of gender of an employee's spouse under title VII of the civil rights act.
- Eligibility for tax favored treatment for flexible spending accounts and health savings accounts.
- Special group health benefits enrollment rights under the Health Insurance Portability and Accountability Act.

Should you need help with any of your employee benefits programs for your restaurant, from disability and health insurance to 401k plans and retirement accounts, please call us, toll free, at 877-687-7557. We look forward to helping you.