

Supreme Court Strikes Down Federal Defense of Marriage Act

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On June 26, in a 5/4 decision involving the underlying case of *United States v. Windsor*, the U.S. Supreme Court struck down the Defense of Marriage Act (DOMA), holding that it violates due process as guaranteed by the 5th Amendment.

The Supreme Court compared the treatment of same sex and heterosexual couples who are legally married under New York laws and found that, while these couples are treated the same under state law, they are treated differently under thousands of federal laws because of DOMA. The court referenced such federal laws as social security, healthcare, income and estate taxes, student loans, etc.

The tide of public opinion has clearly turned. As in years past, bills are being introduced to amend the Elliott-Larsen Civil Rights Act and Title VII to add sexual orientation to the protected categories. The support for such amendments grows each time they are introduced. However, even without such amendments, legal theories exist that provide claims against employers who discriminate against homosexuals in the workplace (i.e., the gay employee did not fit the stereotype of masculinity).

While the Supreme Court, for now, has declared that it is the providence of states to legislate marriage, it stepped on that right a few decades ago when reviewing a case concerning a state's prohibition of inter-racial marriages. It appears that it is only a matter of time before sexual orientation becomes a protected category and/or marriage equality is the law of the land.

Clearly the Supreme Court's ruling will have huge ramifications in states where same sex couples are allowed to marry. However, when an employee who is legally married to a same sex partner is transferred to Michigan (or another state that does not recognize gay marriages), will he or she still have rights under the Family and Medical Leave Act to care for their spouse? It will take time to sort out the legal ramifications of this opinion.

If you need assistance in reviewing and updating your employment policies, please contact the author or your Plunkett Cooney employment attorney.

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