

Employment Law Considerations Following The United States Supreme Court's Landmark Decision Regarding Same-Sex Marriage

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On June 26, 2015, the United States Supreme Court rendered its 5-4 decision in *Obergefell v. Hodges*, holding that same-sex partners have a right to marry under the Fourteenth Amendment to the United States Constitution. Although *Obergefell* did not squarely address issues of employment law, it may have an indirect impact on employment policies, practices and laws. The following are just some of the employment law areas which may be affected by this most recent decision:

- Leave of Absence Policies – Earlier this year, the United States Department of Labor clarified that the definition of “spouse” under the Family and Medical Leave Act means the person to whom the individual is married based on the law of the jurisdiction where the marriage occurred. Following *Obergefell*, all states must permit and recognize same-sex marriage. Thus, the definition of “spouse” under federal, state, and local laws will likely be amended or interpreted in a way that meets the mandates set forth by the Supreme Court. Further, where an employer’s leave policies permit employees to take leave to care for or mourn the loss of a “spouse,” employers should likewise revise or interpret their policies in a manner that is consistent with the Court’s decision.
- Equal Employment Opportunity - Some state and local laws include “marital status” as a protected category. Under *Obergefell*, same-sex marriages now logically fall within that protected category, such that employers cannot treat differently, on the basis of marital status, an employee in a same-sex marriage than an employee in an opposite-sex marriage, or an unmarried employee. Notably, *Obergefell* does not address the protected status of individuals on the basis of sexual orientation.
- Employee Benefits - Early last year, we alerted you to The *Windsor* Effect On Workplace Rights, which involved the Supreme Court’s invalidation of Section 3 of the Defense of Marriage Act regarding the imposition of estate taxes against Ms. Edith Windsor following the death of her same-sex spouse. We can expect that the *Obergefell* decision will facilitate even broader changes with respect to employee benefits, including, but not limited to, the computation of federal, state and local taxes, enrollment in health and welfare benefit plans, and the administration of retirement plans.
- Spousal Privilege - We can expect the protections of the “spousal privilege” to expand to confidential communications between legally married same-sex partners.

Employers should carefully review their current policies and procedures to minimize certain legal risks and to confirm that their practices align with this latest Court decision. If you have any questions regarding *Obergefell*, need assistance with updating your policies or procedures, or you have any other employment related questions or concerns, please contact George Morrison (610-782-4911; morrisong@whiteandwilliams.com), another member of our Labor and Employment Group, or any member of the Firm whom you regularly contact.

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