

Supreme Court to Review Same-Sex Marriage Cases

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The ***Supreme Court of the United States*** announced on January 16, 2015, that it would review four cases challenging the constitutionality of state laws banning same-sex marriage in ***Kentucky, Michigan, Ohio and Tennessee***. The U.S. Court of Appeals for the Sixth Circuit ruled in November 2014 that the ***same-sex marriage*** bans in these states were constitutional, thereby creating a split of opinion among the federal circuit courts.

As of January 30, 2015, same-sex marriage is *legal in 36 states and the District of Columbia*. In addition, Michigan is expected to soon begin recognizing 323 marriages that were performed there in March 2014 (during the one-day period after a district court found the state's ban on same-sex marriage unconstitutional and before an appellate court issued a stay of the district court ruling).

A ruling by the Supreme Court is expected in June 2015. If the Supreme Court rules that state laws banning same-sex marriage are unconstitutional, the ruling will create precedent that will lead to the legalization of same-sex marriage in all 50 states. Same-sex couples would then be able to marry in any state and would be entitled to all of the rights, benefits and obligations that are extended to opposite-sex spouses under both federal and state laws.

Federal Law

In 2013, the Supreme Court ruled in ***U.S. v. Windsor*** that Section 3 of the ***Defense of Marriage Act (DOMA)*** is unconstitutional (for more information, see "[Supreme Court Rules on DOMA and California's Proposition 8](#)"). Section 3 of DOMA had provided that, for purposes of all federal laws, the word "marriage" means "only a legal union between one man and one woman as husband and wife," and the word "spouse" refers "only to a person of the opposite-sex who is a husband or wife." Subsequent Internal Revenue Service (IRS) and U.S. Department of Labor guidance clarified that, as a result of *Windsor*, favorable federal tax treatment of spousal benefit coverage would extend to all same-sex couples legally married in any jurisdiction with laws authorizing same-sex marriage, regardless of whether the couple currently resides in a state where same-sex marriage is recognized (see "[IRS Guidance Clarifies Retroactive Retirement Plan Impact of Supreme Court's Windsor Ruling](#)").

" for more information). The most recent IRS guidance clarifies that, effective as of June 26, 2013, retirement plans must be administered in a manner that reflects the *Windsor* ruling.

Next Steps for Employers

All employers should continue to monitor developments in this case and in state same-sex marriage laws. The Supreme Court's ruling could have significant consequences for employers in states where same-sex marriage has not been legalized or that have not otherwise extended spousal benefit coverage to same-sex spouses. An employer that currently extends benefit coverage to unmarried same-sex partners would need to consider whether to continue offering such benefits if all employees can marry and thereby receive spousal coverage under the employer's benefit plans.

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National Law Review, Volume V, Number 34

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