

DOMA Decision Reminder of Change in Marital Status Requirements in Benefit Plans

The Supreme Court's decision to overturn DOMA (Defense of Marriage Act) in the summer of 2013 (see more [DOMA article](#), [DOMA webinar/video](#)) prompted a flurry of regulatory activity and compliance actions. Now that the dust has settled, we thought that this might be a good time to review some of the benefit impacts of the DOMA decision as well as actions that may be necessary for any change in marital status – marriage, divorce, or death – regardless of same or opposite sex spouse. We've outlined the key components of Health & Welfare and Retirement Plans that are impacted by DOMA and may require action with any change in marital status.

Plan Documents – Spouse Definition

An employer/plan sponsor should pay close attention to the language in their plan documents related to the definition of “spouse”. This includes all Health & Welfare plan documents (health, dental, vision, life, etc.), Section 125 plan documents, HRA plan documents, and retirement plan documents (401(k), 403(b), 457(b), etc.). In many plan documents, the term “spouse” refers to the legal definition of a spouse, and therefore requires no further action or interpretation.

However, some plan documents refer to an opposite sex spouse only, and would need to be amended or revised to reflect the impact of the DOMA decision and the regulatory guidance that followed.

Domestic Partner Impact

Domestic partners are now recognized as spouses if they were legally married, regardless of their state of residence's recognition of the ceremony. However if an employee has not been legally married, the domestic partner status has not changed. This is especially important to note since many health plans allow coverage of domestic partners under the group health plan. The premium contributions for the domestic partner remain after-tax, the domestic partners claims are not eligible for FSA reimbursement, the domestic partner does not receive COBRA continuation rights, nor are they granted beneficiary rights under a retirement plan.

COBRA Continuation Notices

COBRA continuation rights still exist, and so do the two required notices – the COBRA Initial Notice and COBRA Qualifying Event Notice. COBRA Initial Notices must be provided when a participant first becomes enrolled in a COBRA-eligible benefit (e.g. health, dental, vision, etc.) and must be sent to

the participant, spouse and covered children. An often overlooked requirement also requires a COBRA Initial Notice be provided to any new spouse at the time that they become enrolled in the COBRA-eligible benefits. This applies equally to same or opposite-sex spouses.

It is the participants' responsibility to notify the employer of the newly covered spouse, but it is the employer's responsibility to send a new COBRA Initial Notice (or through their COBRA TPA). Similarly, if a COBRA Qualifying Event occurs (termination, divorce, etc.), a COBRA Qualifying Event Notice must be sent to each previously enrolled COBRA-eligible benefit participant. This includes the participant, their spouse (same or opposite-sex), and covered children. Each covered member has an independent right to elect COBRA continuation, so it is imperative to include all applicable family members.

Retirement Plans

The following is a list of some of the ways your retirement plans may be impacted:

- Death benefits – a same sex spouse is now the primary beneficiary even if others had been named previously.
- Hardship withdrawals – Plans may allow hardship distributions to a

participant for a need created by his or her primary beneficiary.

- QJSA (QPSA) – Retirement plans that allow survivor annuity options must know who the spouse is in the event of death.
- Spousal consent – Retirement plans with QJSA options must obtain spousal consent prior to the distribution of loan proceeds. A spouse must sign a waiver for another person to be named primary beneficiary of a retirement plan account.

We recommend notifying your participants of the potential impacts of the ruling, and as a reminder for all marital status changes.

Change in Marital Status To-Do's

Outlined below are the some of the probable benefit to-do's for an employer with common changes in marital status:

- Marriage (same or opposite-sex)
 - Electing benefit coverage
 - Notify insurance carrier(s)/TPA(s)
 - Notify COBRA TPA to send new Initial Notice to spouse
 - Employee enrolled in retirement plan
 - Have employee complete new beneficiary designation form
- Divorce (same or opposite-sex)

- Enrolled in benefit coverage
 - Notify insurance carrier(s)/TPA(s)
 - Notify COBRA TPA to send Qualifying Event Notice to ex-spouse
- Employee enrolled in retirement plan
 - Have employee complete new beneficiary designation form
- Death of Employee
 - Spouse enrolled in benefit coverage
 - Notify insurance carrier(s)/TPA(s)
 - Notify COBRA TPA to send Qualifying Event Notice to surviving spouse
 - Employee enrolled in retirement plan
 - Locate beneficiary designation form and understand plan's rules on death benefits.

Communication with Employees

The DOMA ruling may have created marital status changes that you and/or your employees may not have realized. We recommend communicating the potential impacts of this decision on your employees and reminding *all* employees of the importance of communicating any marital status changes.

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