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# Supreme Court Strikes Down State Laws Banning Same-Sex Marriage

On June 26, 2015, the Supreme Court issued its decision in *Obergefell v. Hodges*, striking down state laws banning same-sex marriage. The Court, reversing the decision of the Sixth Circuit upholding such bans, held that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex, and to recognize marriages between two people of the same sex lawfully licensed and performed in another state.

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## Background

Plaintiffs in Michigan, Kentucky, Ohio and Tennessee each sued in their home states, claiming that the states' definition of marriage as between one man and one woman and/or their home states' refusal to recognize a lawful marriage between two people of the same sex performed in another state violated the Fourteenth Amendment of the U.S. Constitution. The Sixth Circuit consolidated the four cases into one case for purposes of its review. The Sixth Circuit held that the states' decisions to define marriage as between one man and one woman, and the states' refusal to recognize same-sex marriages conducted in other states do not violate the Fourteenth Amendment.

## Supreme Court Decision

The issues before the Supreme Court were whether the Fourteenth Amendment requires a state to license marriages between two people of the same sex and whether the Fourteenth Amendment requires a state to recognize a marriage between two people of the same sex legally performed in another state.

After reviewing a history of marriage and relevant court precedent, the Supreme Court concluded that the right to marry is a fundamental right protected by the Constitution. Under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the Supreme Court held that same-sex couples may exercise their fundamental right to marriage and states cannot deny this liberty. To the extent the state laws challenged in these cases prevent same-sex couples from obtaining a marriage license on the same terms and conditions as opposite sex couples, the Court held that these laws are invalid. The Court further held there is no lawful basis for a state to refuse to recognize a marriage between two

people of the same sex validly performed in another state.

## Impact on Employee Benefit Plans

**Retirement Plans**

As a result of the Supreme Court's 2013 decision in *US v. Windsor* and subsequent guidance, retirement plans must treat the same-sex spouse of a participant as a spouse under the plan if the same-sex couple is legally married in a jurisdiction that permits same-sex marriage. Retirement plans should not expect much, if any, impact from the Court's decision.

**Health and Welfare Plans**

Insured health plans may be impacted by the Court's decision because plan sponsors in states that currently ban same-sex marriage may now be required to offer benefits to same-sex spouses under state insurance law. The issue of whether a self-funded health plan can exclude same-sex spouses from coverage when the plan covers opposite-sex spouses is still an open issue. There is no direct guidance prohibiting a self-funded health plan document from defining "spouse" to exclude same-sex spouses. However, there may be a risk that a participant will challenge that definition in court.

Finally, employers in states that currently ban same-sex marriage will no longer be required to impute income related to group health plan coverage for the employee's same-sex spouse for state tax purposes. Employers should refer to the state department of revenue for timing and rules related to this change in tax treatment. Once implemented, this change should allow employers with participants in different states to enjoy consistent administration.

If you have questions about the topics discussed in this e-alert, please contact your Reinhart attorney or any member of our Employee Benefits Practice.