

**JUNE 2, 2014 BULLETIN TO ALL LABOR & EMPLOYMENT CLIENTS**

## **PA Overturns Same-Sex Marriage Ban – Employers Face Significant Changes in Employee Benefits and Leave Administration**

As a result of the same-sex marriage ban in Pennsylvania being overturned and recent IRS guidance, employers need to be aware of – and immediately implement – significant changes in employee benefit programs and Family and Medical Leave Act (FMLA) leave policies.

Last year, Section 3 of the Federal Defense of Marriage Act (DOMA), which defined marriage as being exclusively between a man and a woman, was declared unconstitutional by the United States Supreme Court. This ruling meant that individual states were free to decide the issue of whether to overturn their own same-sex marriage bans. On Tuesday, May 20, Pennsylvania became the latest state to overturn a ban on same-sex marriage. The case, *Whitewood v. Wolf*, decided by District Judge John E. Jones, struck down a 1996 Pennsylvania statute mirroring DOMA. Shortly after the May 20 ruling, Governor Tom Corbett announced his intention not to appeal, meaning the decision went into effect immediately.

For individuals, the result could have a sweeping impact on a number of legal areas, including tax planning, familial rights, and property rights. For example, as Judge Jones pointed out in his opinion, same-sex couples were required to pay inheritance tax at 15 percent, the highest rate, even though spouses are ordinarily exempt from this tax when receiving property from a decedent spouse. State tax filing status will also be affected, and retroactive amended filings may be beneficial to certain individuals.

Employers need to be aware of the effects this ruling and the position of the IRS, after the invalidation of DOMA, in Notice 2014-19 have on benefit programs and FMLA leave. Married same-sex couples will now be able to designate spouses as beneficiaries in qualified retirement plans and spouses will have certain rights under those retirement plans. Employers utilizing Flexible Spending Accounts will also need to revisit their reimbursement policies to permit reimbursements for a same-sex spouse. In addition, a same-sex marriage should be considered a qualifying event for health and welfare plan enrollment. It is likely that many employers' plan documents and summary plan descriptions currently do not contemplate the new rights that same-sex spouses now have in Pennsylvania and will need to be amended. IRS Notice 2014-19 requires that the plan documentation be amended by December 31, 2014 to preserve qualified tax status.

In addition, the FMLA requires employers to provide leave for the serious health condition of an employee's spouse. The FMLA defines "spouse" as "a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides." Employers in Pennsylvania need to immediately revise their FMLA policies and begin providing leave for an employee to take care of a same-sex spouse with a serious medical condition.

Employers must plan for the changes in workforce benefits packages, and should draft an overall strategy, examining summary plan descriptions and employee handbooks to determine how policies will impact employees in same-sex marriages. By reviewing their employee benefits policies and employee handbooks as soon as possible, employers can identify and modify any areas that may be affected by the Federal and Pennsylvania rulings, as well as IRS guidance, including spousal definitions, FMLA leave qualifications, and beneficiary designations.

### **More Information**

Please contact any member of the Cohen & Grigsby Labor & Employment Group at 412.297.4900 if you have any questions regarding this information. To receive future bulletins by e-mail, please send an e-mail to [info@cohenlaw.com](mailto:info@cohenlaw.com).

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