



The Impact Of New York's Marriage Equality Act On Employee Benefits Plans

By Callan Carter (San Francisco) and Pat Harris (Atlanta)

This past summer, New York passed its Marriage Equality Act, which generally provides that same-sex couples can legally marry in New York, and that same-sex married couples are to be treated the same as opposite-sex married couples under New York laws. We're reporting on it here because many believe that this law may be a harbinger of what other states may soon consider. Such laws create potential problems for benefits administrators.

What Is Affected

Employers with New York state income tax withholding and reporting obligations need to review the impact of this law on their benefit plans and work with their payroll personnel or administrator to ensure proper state income tax withholding for benefits provided to same-sex spouses of New York employees. Note that several other states now recognize same-sex marriages, domestic partnerships and civil unions, so while this article focuses on New York employees, the state income tax treatment could also apply to employees in other states.

States' recognition of same-sex couples can cause significant payroll issues for employers because these states' tax laws now differ from federal tax laws. The federal Defense of Marriage Act (DOMA) specifically bars federal recognition of same-sex marriages and civil unions. DOMA's restriction means that any employee benefits that rely on the federal definition of "spouse" for purposes of what is exempt from taxable income to an employee (such as Section 125 cafeteria plans' pre-tax payment of premiums, flexible spending accounts (FSAs), health savings accounts (HSAs), health reimbursement accounts (HRAs), employer contributions to benefit premiums, etc.) apply only to married couples of the opposite sex for federal income tax purposes.

Consequently, the Marriage Equality Act causes New York state tax law to differ from federal tax law. For example, under New York state tax law, an employee with a covered same-sex spouse will receive tax-favored treatment from New York with respect to the health coverage of the spouse,



but under federal tax law, the same-sex spouse would not receive tax-favored treatment on the basis of marriage unless the same-sex spouse is an employee's tax dependent ("qualifying relative") under section 152 of the Internal Revenue Code.

Action Needed?

If your operations are solely within a state that has adopted a state DOMA law, you have no legal obligation to provide benefits to same-sex spouses/partners, though you may need to do so to remain an employer of choice. If you have employees in several states, we suggest you evaluate your benefit plans to make sure they comply with each applicable state's laws regarding same sex couples.

At the very least, employers should contact their payroll personnel and administrators to confirm that New York state taxes are being properly withheld and reported. Information on New York state income tax withholding and reporting is available from the New York State Department of Tax and Finance.

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Compliance Update

What's Required By Year-End?

By Jared Pope (Dallas)

As 2011 draws to a close and everyone looks forward to winding down and getting ready for the holiday season, we want to make sure that

you have taken care of certain regulatory compliance matters with respect to your employee benefit plans between now and December 31, 2011. The information below briefly describes what is required to make sure your plan(s) is set for the new year!

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Compliance Update

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Type of Plan	What's Required	Topic	Brief Description	Deadline
401k (and other qualified plan accounts)	Optional Amendment	In-Plan Roth Conversions	If plan permits in-plan conversions for plan year prior to 2012, then amendment is required	12/31/11
401k (and other qualified plan accounts; 403(b), etc.)	Amendment	Waiver of Required Min. Distributions for 2009	This is an amendment to reflect operational compliance	12/31/11
401k Plans	Annual Notice	Automatic Enrollment	Notice indicating plan's automatic enrollment feature	Prior to 12/1/11
401k Plans	Annual Notice	Safe Harbor	Notice of plan's safe harbor status	Prior to 12/1/11
401k Plans	Annual Notice	Qualified Default Investment Alternative	Notice indicating plan's default investment if an investment is not selected during enrollment, etc.	Prior to 12/1/11
Benefit Plans	Annual Notice	Summary Annual Report	Notice regarding status of the plan and summary of benefits	12/15/11 (assuming 5500 was filed 10/15/11)
Governmental Plans	Amendment	HEART Act	Plans must be amended to comply with various provisions regarding death benefits, differential pay and other benefits for qualified military service	12/31/12
Governmental Plans	Amendment	Pension Protection Act (PPA)	Plans must be amended to comply with various PPA requirements (i.e., distributions, notices, administration issues)	12/31/11
Health/Welfare	Administration Process (possible Amendment)	Health Care Reform (HCR): External Appeals Process & Independent Review Organizations (IRO)	Plans must have selected and put into place an IRO for external appeals, of which the plan must have selected 2 IROs by 1/1/2012 and 3 IROs by 7/1/2012	12/31/11 & 6/30/12
Health/Welfare	Amendment	Annual Limit on Essential Benefits	Effective 1/1/12, limit goes from \$750,000 to \$1.25M	12/31/11
Health/Welfare	Amendment	HCR: New Internal & External Appeals Process	Under HCR, new procedures and requirements apply for internal and external appeals process	12/31/11
Health/Welfare	Annual Enrollment Issue & Status Check	HCR and Grandfathered Plans	If plan is grandfathered, ensure limitations are not exceeded regarding benchmarks	12/31/11
Health/Welfare	Annual Notice	Medicare Part D	Notice to Medicare eligible participants regarding creditable coverage	10/15/11
Health/Welfare	Annual Notice	CHIP Notice	Notice regarding state's premium assistance programs	12/31/11
Health/Welfare	Annual Notice	HCR: Summary of Benefits and Coverage	Health plans must provide Summary of Benefits and Coverage that outlines covered benefits and coverage limitations	3/23/12
Health/Welfare	Annual Notice	HIPAA/HITECH Breach Report	Notice to HHS if there has been a breach of protected health information affecting 500 or less individuals	Prior to 3/1/12
Multiemployer Pension Plans	Administration Process (possible Amendment)	New FASB Disclosure Requirements	Disclosure of the overall health of the plan, the level of the employer's participation in the plan, and employer's contributions to the plan	December 15, 2011 for public entities December 15, 2012 for non-public entities
Pension Plans	Amendment	Benefit Payments & Accruals	Imposes limits on benefit payments and accruals (based on funding status of plan)	12/31/11
Pension Plans	Annual Notice	Plan Funding Status Notice	Notice regarding funding status for prior 2 years, statement of plan's assets and liabilities, and certain other information	4/30/12 (Plans with less than 100 participants notice deadline is due date for IRS Form 5500)
Qualified Plans	Administration Process (possible Amendment)	Determination Letter Application	Cycle A which includes plans sponsored by employers with EINs ending in the digits 1 or 6	Application must be filed by 1/31/2012

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