

# Massachusetts Court Ruling May Have Immediate Effect on Employee Benefits

July 2010

[Kimberly I. McCarthy, Esq.](#)

On July 8, 2010, a Massachusetts District Court held that the federal Defense of Marriage Act (DOMA) is unconstitutional, specifically in its application to health benefits. Same sex spouses may be covered by health insurance, but, under current law, the IRS has held that, due to the DOMA, health insurance cannot be offered on a pre-tax basis unless the spouse is a “dependent” under federal law. As a result, employees with same sex spouses often are treated as if the value of the health insurance was paid as additional taxable income.

Similarly, coverage of same sex spouses is prohibited under the cafeteria plan regulations and HIPAA, and same sex spouses are not required to be covered by COBRA. As a result, many employers exclude or restrict same sex spouses for certain purposes under their health benefit plans.

Unless and until it is upheld by the First Circuit or Supreme Court, this ruling applies only in Massachusetts. Constitutional law experts have weighed in, including in today’s *New York Times*, indicating their opinion that the decisions would not be upheld on appeal.

The ruling appears to have an immediate effect, although it may be stayed pending an appeal. Employers can expect to receive questions on this issue, or demands that benefits be made available on a pre-tax basis, as a result of this ruling.