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Business EXPERTise

Recognized and respected issue experts from PA Chamber member companies answer businesses' most frequently asked questions about HR, Tax, Communications and Environmental concerns, compliance and best practices.

HR

How does the DOMA decision impact my company's obligations to its employees, in terms of benefits, leave issues and more?

There is no question that the U.S. Supreme Court's decision in *United States v. Windsor*, which struck down a provision of the Defense of Marriage Act (DOMA), impacts your company's obligations with respect to its policies on Family Medical Leave Act (FMLA) leave, qualified retirement plans and benefit programs. Your company should review and make updates to your policies and programs immediately.

The *Windsor* decision held that the federal government must recognize same-sex marriages legalized by states for federal benefits and privileges. Currently only 13 states (California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont and Washington) and the District of Columbia recognize same-sex marriages. Further, a new FMLA guidance just issued in August in response to *Windsor* affirms the availability of FMLA leave to an employee to care for that employee's same-sex spouse with a serious health condition. The guidance defines "spouse" for purposes of FMLA leave to mean "a husband or wife

as defined or recognized under the state law for purposes of marriage in the state where the employee resides." So what does all of this mean for businesses located in Pennsylvania, where same sex marriages are not recognized?

Pennsylvania employers must ensure that their FMLA policies and procedures provide leave for eligible employees in same-sex marriages. To the extent you have employees who live in Delaware, or in any of the other states where same-sex marriages are currently legally recognized, you will need to be in compliance. While the new guidance does not currently expand FMLA leave eligibility to same-sex married couples who live in Pennsylvania or the other states that do not recognize same-sex marriage, this may change in the future as the government continues to review its laws.

To this end, the IRS just announced that same-sex couples legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. This will directly impact your company with respect to how you treat health insurance benefits afforded to employees in same-sex marriages. Also, all spousal rights under qualified retirement plans offered by your company will now apply to same-sex spouses, as will benefits under COBRA. In



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addition, a same-sex spouse's unreimbursed medical expenses can now be submitted for reimbursement to the employee's flexible spending account (FSA).

There is no question that maneuvering the evolving legal landscape with respect to policies and benefits for same-sex married couples in your workplace will be a tricky and challenging endeavor. Be sure to consult with your legal counsel as you review and implement the changes needed. ♦

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