

# Gay Marriage, Court Rulings & Retirement Plans

## What It Means For Retirement Plans

### How Do Windsor And Obergefell Supreme Court Decisions Affect Retirement Plans?

- ◆ The June 2013 decision by the Supreme Court (plaintiff's name: Windsor) held that the Federal government could not deny tax rights to same gender couples who were married in a jurisdiction that allowed same gender marriage.
- ◆ The June 2015 decision by the Supreme Court (plaintiff's name: Obergefell) held that same gender couples cannot be denied the right to marry.

Taken together the phenomenon of "Married in Toronto, but just good friends in Tulsa" is no longer applicable. Since retirement plans are ruled by Federal law – all legal marriages must be recognized for pension and retirement plan purposes.

### Specific Areas To Consider

#### Company Ownership

For determination of company ownership, married couples have joint ownership of each other's property and businesses. If Pat, a successful real estate agent, with no employees, marries Chris, who owns a moving company with 10 full time employees, they are now both owners of each others' businesses. Pat cannot establish a Retirement plan at the agency without taking into consideration the employees at Chris' moving company.

#### Highly Compensated Employees (HCEs)

For Determination of HCE status, if Dave and Eli each own 3% of the business for which they work and they then get married, they are now each 6% owners of the business and are automatically HCEs, no matter what their salary level.

#### Spousal Consent

Most plans require the spouse to be the primary beneficiary. One can only designate someone else as the primary if the spouse consents. Some distributions and loans require spousal consent as well. A spouse may have to waive the right to an annuity form of payment, or could just put the brakes on a profligate loan.

#### Divorce

The benefits that a participant earns under a plan are part of the joint marital property that will be split up during a divorce. While most of us have yet to process a QDRO for a same gender couple, it is only a matter of time.

#### Spousal Relationships In Society

Although the law has become clear about the rights of all spouses, society may not be as ready to know about the legal spousal relationship. As long as in some states one can be married on Sunday and fired on Monday for being gay, some same gender couples may not be forthcoming to their employers and peers about their status.

#### Time To Review?

Changes in family status, including all changes in marital status, are a good time to review your paperwork. This includes wills, trusts, insurance policies, and all your retirement plan paperwork. Mazel Tov!



Check out "Low-Cost Ways To Improve 401(k) Participation" for additional ways to encourage employees to open 401(k) plans.

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