

Massachusetts District Court Stays Judgments Overturning Federal Rules on Same-Sex Spouses

On August 18, 2010, the U.S. District Court for the District of Massachusetts granted final judgment in favor of the plaintiffs in two cases challenging the constitutionality of Section 3 of the federal Defense of Marriage Act (“DOMA”), which, for purposes of federal law, defines “marriage” to mean exclusively the legal union between a man and a woman as husband and wife and “spouse” to mean exclusively a person of the opposite sex who is a husband or a wife. At the same time, the court stayed the judgments pending appeal. As a result, the judgments invalidating the DOMA definitions of “marriage” and “spouse” will not take effect until the appeal process is concluded or the stay is lifted. The U.S. Department of Justice has 60 days to appeal.

In *Gill v. Office of Personnel Management*, the District Court held that Section 3 of DOMA violates the equal protection clause of the Fifth Amendment to the U.S. Constitution. In a companion case, *Commonwealth of Massachusetts v. U.S. Dep’t of Health and Human Services*, the District Court held that DOMA, as applied to the Commonwealth of Massachusetts, also violates the Tenth Amendment and the Spending Clause of the Constitution. These rulings, if upheld on appeal, may fundamentally alter the availability and tax treatment of a wide range of employee benefits for same-sex couples in Massachusetts who are legally married under any state law. They would also affect employer’s obligations under the federal Family and Medical Leave Act.

Prior to these rulings, same-sex couples married under the laws of Massachusetts, Connecticut, Iowa, Vermont, New Hampshire or the District of Columbia, or under a marriage license issued during the brief period that same-sex marriage licenses were available in California, could enjoy only limited benefits under employee benefit plans subject to federal law. For example, health benefits provided to a non-dependent same-sex spouse result in imputed income to the employee and same-sex spouses of retirement plan participants do not have the death-benefit protections available to opposite-sex spouses. A change in these and other employee benefit and federal tax treatments of same-sex spouses will require potentially significant changes in the way companies administer their payroll and benefits programs.

In addition, if the *Gill* and *Commonwealth of Massachusetts* decisions stand, Massachusetts employers subject to the Family and Medical Leave Act (“FMLA”) will need to treat same-sex spouses the same as opposite-sex spouses for purposes of the FMLA. That is because DOMA, which permits FMLA leave only for the care of opposite-sex spouses, would no longer apply, meaning Massachusetts employers would violate the FMLA by refusing to grant leave to care for a same-sex spouse.

Even though the DOMA decisions have been stayed pending appeal, administrators of employee benefit plans may want to review their plans on a preliminary basis to determine what changes would be required if the decisions are upheld. While any appeal is pending, moreover, participants with a personal interest in the outcome (for example, a participant with a same-sex spouse who is undergoing a divorce and seeks a division of plan benefits – permissible under the District Court’s rulings, but not while the judgments are stayed) may raise questions about their rights. Until such issues are resolved in the courts, we advise plan administrators to sit tight and take no action to implement changes in procedures.

Please contact your Ropes & Gray legal advisor with any questions about the impact of these decisions.