



July 8, 2013

Q&A FOR BENEFITS

****PROP 8 & DOMA—SAME-SEX MARRIAGE****

Effective immediately a same-sex spouse is now considered a legal spouse for federal tax purposes in states that have legalized same-sex marriage, and same-sex spouses will be eligible for federal benefits in the same manner as other spouses.

Presently 12 states and the District of Columbia recognize same-sex marriage, and the effective repeal of DOMA by the Supreme Court answers some questions but not necessarily all of them. With so many rights and obligations of federal and state law based in part on a person's marital status, it will take some time to determine all of the ways in which the Supreme Court's latest ruling will change existing law and practices. We are following the matter closely, and will continue to update you on the impact these decisions have on your coverage in the County's benefit plans.

HEALTH PLANS

Q. 1 I married my spouse in 2008 but did not add him/her to benefits at that time. Can I enroll my spouse now based on the Supreme Court ruling?

A. 1 No.

While it is true that there is no longer a Federal Imputed Income impact due to the Supreme Court decision on DOMA, the change from an imputed income charge to a pre-tax payment is outside of IRS rules governing the Section 125 Cafeteria plan for mid-year enrollments. You may add your spouse during Open Enrollment for coverage to begin January 1, 2014.

Q. 2 My spouse and I were recently married based on the 6/27/2013 Supreme Court ruling. Can I add my spouse to benefits now?

A. 2 Yes.

You have 30 days from the date of marriage to add your spouse to benefits. Changes are made online at www.benefitbridge.com/saccounty; a copy of the marriage certificate is required.

Q. 3 My spouse and I were married in 2008 and s/he was added to benefits. Will my contributions automatically be pre-tax? Will imputed income continue to be applied?

A. 3 Your contributions for dependent premiums will now be pre-tax. Additionally, the imputed income will no longer be applied.

Q. 4 My Partner and I are registered with the Secretary of State. How does our Partnership impact our benefits enrollment and ability to get married?

A. 4 There is no midyear event at this time that would permit registered domestic partners to qualify for a change in enrollment unless the IRS issues guidance allowing it.

California's statutorily-established status for same-sex registered domestic partners was unaffected by either of the Supreme Court's decisions. Registered domestic partners are still legal in California, but nothing in the Court's rulings require the Federal government to treat registered domestic partners as spouses under Federal law. Imputed income will still be applied when domestic partners are enrolled in benefits.

Q. 5 Are health expenses for my same sex spouse reimbursable under an FSA or HSA?

A. 5 Yes.

Under DOMA, domestic partners and same-sex spouses who are not tax dependents could not receive benefits under a health Flexible Spending Arrangement (FSA), Health Reimbursement Arrangement (HRA), or Health Savings Account (HSA.) Because of the Court's ruling, employees may now be able to use their benefits under those plans to pay for medical expenses for their same-sex spouses, even if they are not currently covered under a County benefit plan.

Q. 6 Does my same sex spouse have COBRA rights?

A. 6 Yes.

Previously, same sex partners could not be considered qualified beneficiaries in their own right and independently elect COBRA. With the Court's latest ruling same sex spouses should be qualified beneficiaries and have independent election rights under COBRA.

DEFERRED COMPENSATION

Q.7 How does the decision impact hardship withdrawals relating to same sex spouses?

A. 7 The Pension Protection Act of 2006 expanded the circumstances under which hardship distributions may be triggered to include hardship of a domestic partner who is not a dependent; plans were permitted (but not required) to adopt the broadened definition. Regardless of whether a plan was amended to adopt the broadened definition, in the absence of DOMA, a hardship relating to a same-sex spouse will become covered to the same extent as an opposite-sex spouse.

Q.8 How are the rules on Qualified Domestic Relations Orders (QDRO) for same sex spouses affected?

A. 8 Currently, the rules on QDROs do not permit same-sex spouses to be alternate payees, and employers are not required to comply with orders in which a same-sex spouse is named as the alternate payee. Without DOMA, this will no longer be the case and QDROs relating to same-sex spouses will be valid.

Q.9 Does the ruling impact Required Minimum Distributions (RMD) for surviving same sex spouses?

A. 9 Same-sex spouses were not permitted to defer RMDs until April 1 of the year following the year in which the spouse would have reached age 70½ but, rather, must receive the entire interest of the deceased employee within five years or rollover into an inherited IRA. In the absence of DOMA, a surviving same-sex spouse that inherits benefits before RMDs have

begun should have the same rights as currently available for opposite-sex spouses to delay distributions until the time when the deceased employee would have reached age 70½.

Q.10 Is spousal consent required from my same sex spouse prior to naming a non-spouse beneficiary?

A. 10 Yes.

Currently, the 457(b) and 401(a) plans require spousal consent for naming a non-spouse beneficiary. No spousal consent is needed for loans.

STILL UNANSWERED QUESTIONS

Q. 11 Will plans change the imputed income charges to pre-tax prospectively from the date of the decision, or will there be retroactive application?

There has been no word from the IRS about the impact of the ruling on imputed income paid up to this point. It is unclear how soon the IRS will be issuing clarification about this tax issue, but we will make any necessary adjustments as quickly as possible.

Q. 12 Will there be a mid-year grace period for making adjustments to benefits for previously married same sex spouses pursuant to this change in law?

We, are still waiting for some guidance from the IRS on whether they will allow an exception just based on the revocation of the imputed income regardless of any other factor, which we believe will be forthcoming shortly.

Q. 13 Do I need to dissolve my Domestic Partnership to get married?

There has been no state guidance on whether a partnership has to be dissolved prior to getting married.

OTHER INFORMATION

Family Leave Laws

The effect of the Court's ruling on family leave will be minimal in California. Under both the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) a qualifying employee is allowed to take leave to care for the employee's spouse, son, daughter or parent with a serious health condition. CFRA also allows a qualifying employee to take leave to care for a same-sex spouse or domestic partner. Because of DOMA, federal FMLA leave was not available for same sex partners/spouses, but under state law, CFRA leave was. Therefore, the fact the FMLA definition of "spouse" will now include legally-married same-sex couples will not give substantial additional rights to those spouses.

The effect of the Court's ruling could be more significant in the case of the FMLA's military leave provisions. Under the FMLA, eligible employees are entitled to up to 12 weeks of leave for any qualifying exigency arising because the employee's reservist or National Guard member spouse (or son, daughter or parent) is on active military duty, or has been notified of an impending call to active duty in support of a contingency operation. CFRA does not have a corresponding provision. The FMLA also provides for up to 26 weeks of leave for an employee to care for a covered service

member who is ill or injured in the line of duty on active duty. This extended leave provision to care for covered service members applies to spouses, parents, children and next of kin under federal law. The maximum amount of time that CFRA allows to care for an injured or ill spouse is 12 weeks. The Court's decision in DOMA should result in the extension of a right to qualifying exigency leave and extended covered service member leave to employees with same-sex spouses.

