

# Retirement Plans Must be Amended to Recognize Same-Sex Marriages by December 31, 2014

## Labor & Employment Law Update

By Kelly Haab-Tallitsch on April 29, 2014

The IRS released Notice 2014-19 earlier this month, answering many of the open questions on the application of the Supreme Court's decision in *U.S. v. Windsor* to qualified retirement plans. Although the IRS provided initial guidance on the impact on employee benefit plans shortly after the Court found the Defense of Marriage Act's (DOMA) ban on same-sex marriage unconstitutional, many details specific to retirement plans were still outstanding.

### ***Effective Date and Retroactivity***

The recent release reaffirms that qualified retirement plans are required to recognize same-sex marriages as of the date of the *Windsor* decision (June 26, 2013), and confirms that plans will not be penalized for not recognizing them earlier. Plans are required to recognize same-sex marriages using the "state of celebration rule" beginning on September 16, 2013, the date of the prior IRS Notice 2013-17. Under this rule, a plan must recognize a same-sex marriage if the individuals were legally married in a state that recognizes such marriages, even if they are currently living in a state that does not. Plans that were relying on the laws of the state of residency, instead of the state of celebration of the marriage, prior to the September 16, 2013 notice will not be penalized.

Plans may choose to recognize same-sex marriages retroactively prior to June 26, 2013, and may choose to recognize them for some or all purposes, provided the plan is amended to specify the effective date and the specific rules that will be applied. For example, a plan may choose to apply *Windsor* to its joint and survivor annuity requirements and only with respect to participants with benefit commencement dates as of a certain date.

### ***Plan Amendments***

Retirement plans only need to be amended to comply with *Windsor* if the current plan terms are inconsistent with the decision or the IRS guidance. For example, a plan that specifies that a marriage is between two individuals of the opposite sex will need to be amended, but a plan that uses the term "spouse" or "legally

married spouse" may not require an amendment. A clarifying amendment is permissible, however, and may be helpful to plan administrators.

The deadline to adopt a required *Windsor* plan amendment is **December 31, 2014** for most plans. The notice provides that a plan amendment must be adopted to bring a plan into compliance with *Windsor* by the later of December 31, 2014 or the otherwise applicable deadline for plan amendments (i.e. the later of the end of the plan year in which the change is first effective or the due date of the employer's tax return for the tax year that includes the date the change is first effective).

To ensure your retirement plan remains compliant, plan language should be reviewed in the next few months to determine if a December 31, 2014 amendment is needed.

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