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**Effect of Supreme Court's Same-Sex Marriage Ruling on Employment Law**

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On June 26, 2015, the United States Supreme Court issued a landmark decision in *Obergefell v. Hodges*, holding that States can no longer ban same-sex marriages. The Court's decision will have wide-reaching impacts on many areas of law. This article will briefly discuss the impact on a few employment law issues.

The U.S. Supreme Court's 2013 decision in *United States v. Windsor* set the stage for *Obergefell*. In *Windsor*, the Court struck down a portion of the federal Defense of Marriage Act (DOMA), which defined marriage as between one man and one woman. The Court held that, for purposes of issuing federal benefits and other entitlements, the federal government must recognize same-sex marriages that were legally entered into under state law. In *Obergefell* the Court went further, holding that same-sex marriages must be allowed in every state. At the time of the decision, Michigan was one of 13 states that did not permit same-sex marriage, but under *Obergefell*, Michigan can no longer refuse to issue marriage licenses to all eligible individuals (those who are not married already, are of the age of consent, and meet the residency or application requirements) and must recognize those marriages that were performed outside of the state of Michigan.

The *Obergefell* decision will mostly impact employment laws that provide rights or benefits to the spouses of employees. The federal Family and Medical Leave Act (FMLA) requires employers with 50 or more employees to provide eligible employees with unpaid time off for various reasons, including to care for a spouse with a serious health condition. After DOMA was struck down, the definition of "spouse" under the FMLA was expanded to include same-sex spouses. Employers that are subject to the FMLA should now provide leave to employees to care for a same-sex spouse, regardless of where the employee lives or the marriage took place. Further, employers who choose to provide leave rights beyond what the law now requires should review their leave policies, making sure none of them provide disparate leave rights which could be challenged by same-sex married couples.

With respect to employee benefits, federal and state laws that provide benefits to the spouses of employees should now also include same-sex spouses in that definition. Under COBRA, employers with 20 or more employees are required to provide employees with the option of continuing health care coverage after leaving a job. Employees may also elect to continue coverage for certain family members, including spouses. After *Obergefell*, employees are likely to be entitled to continue health care coverage for same-sex spouses under COBRA, no matter where the marriage took place.

With respect to the anti-discrimination statutes, the *Obergefell* decision does not dramatically alter the landscape. First, it doesn't give employees the right to be free from discrimination on the basis of sexual orientation, as that is not a protected class of individuals under any federal or state anti-discrimination statute (however, some local laws prohibit such discrimination). It is

likely that there will be legislative efforts to expand the class of protected individuals under federal and state laws. In addition, Michigan prohibits discrimination on the basis of marital status – and *Obergefell* will impact how such discrimination is viewed by the Courts. Employers would be opening themselves up to liability if they treat employees differently because they have entered into a same-sex marriage.

*Obergefell* was met with an emotional reaction throughout the United States and its impact will likely broaden some protections under many anti-discrimination statutes and will certainly expand employee benefits. Because this is an emerging area of law, employers should review their current policies which may now be outdated in light of *Obergefell*.