Recent U.S. Supreme Court Decisions Impacting Your Benefit Plans and Plan Administration – A Final Word or Just Another Chapter?

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Health Plans and Health Reform—The challenge to the Affordable Care Act ("ACA") related to the subsidies being provided to individuals residing in states that used the federal marketplace instead of setting up a state marketplace was defeated by a 6 to 3 decision with the opinion written by C.J. Roberts. The ACA provision as interpreted by the IRS to permit premium tax credits to individuals in States that did not establish their own exchange, but which defaulted to the federal exchange was upheld as constitutional in spite of the fact that the statute requires the individual to obtain coverage on a state exchange to obtain the premium tax credit. While some are questioning the reasoning of the Court and some members of Congress are threatening to address the ACA on the legislative front, for now the ACA remains constitutional and in effect.

So employers should continue to consider the ACA in benefit plan design and with respect to preparing for the employer shared responsibility tax and the related reporting of offers of coverage to full-time employees, the affordability of coverage on an employee only basis and coverage provided (by self-insured employer plans.)

As for how long we will have the ACA as it is currently written, we will all have to wait and see what the next chapters may hold for us…

Same-Sex Marriage Developments—This week brought decisions from both the U.S. Supreme Court (the "Court") and the Texas Supreme Court (the "TX Court") on State recognition of same-sex marriage. The Court's decision was a split 5 to 4 decision written by Justice Kennedy. The majority of the Court found that the State laws or constitutional provisions in the four States joined in the case which refused to recognize marriages of members of the same gender whose marriage was lawfully licensed and performed out of state were unconstitutional as violations of the Fourteenth Amendment to the U.S. Constitution.

The Court initially found that the right to marry is a fundamental right protected by the Fourteenth Amendment and further stated, "The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied them…. the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-gender couples."

The Court went further and also held, **"The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold-and it now does hold- that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character."**

While a non-governmental employer's actions are not State actions which are impacted by the Fourteenth Amendment's promise of equal protection and due process, non-governmental employer's plans do often consider State laws in making determinations of who is recognized as a spouse for purposes of rights under the plan, for example who is the surviving spouse for retirement plan benefits or who can be covered on a pre-tax basis under a cafeteria plan. The U.S. Supreme Court's decision in Windsor released exactly two years before today's decision along with the subsequent guidance made it clear that same-sex spouses were to be recognized for federal income tax purposes based on the laws of the state in which the marriage was celebrated. This decision makes it clear that if any definition of spouse was still relying on a State law definition which did not permit same-sex spouse recognition or which did not recognize such unions celebrated or licensed in other jurisdictions is relying on a State law cannot continue in effect because it is unconstitutional. So for example a group health plan that defined spouse as a spouse recognized under a particular state law and that State law denied recognition of a same-sex spouse, that State law can no longer stand or be enforced and must now recognize lawful same-sex marriages.

For state and local governmental entities whose employee benefit plans were perplexed by the conflict between the federal law post Windsor and the state laws under which they derived their existence and operated, the Court has ruled such state laws as unconstitutional. The Court's decision helps to alleviate the legal conflict these state and local governmental entities wrestled with, but those are likely not the only challenges faced for some entities.

The TX Court also addressed whether the Texas Attorney General could intervene to get a decision rendered by a county court in Texas permitting a same-sex couple, validly married in another jurisdiction (and after today's Court decision with a marriage all states are required to recognize) granting the couple a divorce in Texas set aside. The TX Court dismissed the State Attorney General's office's petition as lacking jurisdiction to challenge the divorce decree and permitted the lower court's divorce decree to stand. However, the Court's decision today makes it clear that this couple's marriage should be recognized in the state and if recognized, then the ability to divorce would also follow.

Following the Court's decision, plans should review their documents definition of spouse and the procedures they have related to spousal rights, such as delivery of QJSA, QPSA and QOSA notices, delivery of COBRA notices, QDRO procedures and beneficiary designations to be sure that they are consistent with the recognition of all spouses required to be recognized under federal laws and the state laws which have not been ruled unconstitutional. As always, the Court's decision does not come with an effective date or any limitations on retroactivity.