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Another Twist in the Post-U.S. v. Windsor Road for Benefit Plans and HR

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HR departments are seeing a wide impact of the Supreme Court's decision in *Windsor v. U.S.* on benefit plans, and the employment relationship and their operations. The challenges will continue to grow. While no additional guidance has been issued, more is expected to come.

Every employer faces the challenge of identifying who is married and looking at the state laws identifying marriage and the treatment of civil unions and domestic partnerships. To keep the identification of the married persons challenging, there are five states in which there are statutory provisions providing for conversion of civil unions or domestic partnerships into marriages. In four of those five states the conversion to married status either occurred or will occur automatically on a specified date unless the individuals are, at that point, engaged in a dissolution, annulment, or legal separation. The conversion occurs automatically for the individuals who have that status established under the various state laws without any action on their own or notification to them.

Identification of whether an individual is married is critical for a benefit plan to be able to properly notify spouses, obtain spousal consents, and recognize the correct beneficiary. Both the IRS and the U.S. Department of Labor, for employee benefit plan purposes, determined that marital status is determined under the laws of the state in which the marriage was celebrated. At this point it is unclear whether the springing marriages in these five states will be treated as equivalent to marriages celebrated with a ceremony, license, or certificate. There is nothing in any of these five state's state laws that limit the conversion or springing marital status to just individuals still living in these state at the date of conversion. While four of the states convert the relationships to marital status automatically, the fifth state requires the parties to take affirmative actions to effect the conversion.

It is not clear at this time whether these converted or springing marriages will be recognized in the same manner as other marriages which are celebrated under the U.S. Department of Labor guidance for employee benefit plans or the Internal Revenue Service guidance since such guidance requires the individuals to have a marriage that was valid in the state in which it was celebrated regardless of state of domicile. Since these were not celebrated, but instead were other statuses converted to marriages, it is not clear yet whether the same rights will attach to these converted relationships.

Until further guidance is issued, these state statutes present one more wrinkle in the challenges for HR departments in determining whether individuals are married. The individuals impacted by the springing marital status may not even be aware that their status has been converted to married, and of the potential spousal rights that flow under retirement plans, health and welfare plans, and impact aspects of executive compensation and securities laws.

Stay tuned for further developments on the impact of the Windsor decision on employee benefits, human resource functions, and other related issues.

If you have any questions, please do not hesitate to contact any of the attorneys shown on this news alert or your regular contact at Winstead.

Contacts:
Greta Cowart | 214.745.5275 | gcowart@winstead.com
Tony Eppert | 713.650.2721 | aeppert@winstead.com
Nancy Furney | 214.745.5228 | nfurney@winstead.com
David Jackson | 281.681.5944 | djackson@winstead.com
Lori Oliphant | 214.745.5643 | loliphant@winstead.com