

# FYI<sup>®</sup> Alert

## For Your Information<sup>®</sup>

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## Supreme Court to Hear Same-Sex Marriage Cases

The Supreme Court has announced that it will take up the issue of whether same-sex couples have a constitutional right to marry. The Court will decide if the 14th Amendment's equal protection clause guarantees this right, and thus, requires states to permit and recognize same-sex marriages. The Court's decision could significantly impact employers and sponsors of employee benefit plans.

### Developments

The Supreme Court's 2013 ruling, which found section 3 of the Defense of Marriage Act (DOMA) — defining marriage as a legal union between one man and one woman — unconstitutional, broadened the meanings of "spouse" and "marriage" for federal law purposes to include same-sex spouses. Thus, under federal law, employee benefits provided to legally married individuals (regardless of sex) are treated the same. Left unanswered by that decision was the treatment of same-sex marriages for purposes of state law. Since then, a steady stream of litigation around the country has considered the issue, the majority of which have struck down state same-sex marriage restrictions, finding protection under the 14<sup>th</sup> Amendment. In contrast, the US Court of Appeals for the Sixth Circuit upheld same-sex marriage bans in Michigan, Ohio, Kentucky, and Tennessee, overturning the decisions of the lower federal courts in those states.



With the conflict in the appellate courts, the Supreme Court has agreed to hear the issues, which have been limited to the specific questions of whether the 14<sup>th</sup> Amendment requires a state to permit same-sex marriages and recognize those marriages legally performed in another state. The Court will hear arguments in April and a decision is expected in June.

### Implications

The outcome of this case will be significant, but the impact on private and public employers could depend on the Court's reasoning for its decision. For retirement plans that are subject to federal law (such as ERISA plans), a decision in favor of same-sex marriage would not change much except to expand the potential number of participants covered. Those plans are already required to recognize same-sex marriages to comply with the various spousal protection rules. For health and other welfare benefit plans, the decision could put to rest the burden of

determining state law for purposes of imputing state income tax for benefits provided to same-sex spouses. Whether the decision would create an employer obligation to include same-sex spouses when offering welfare benefits to spouses remains to be seen.

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