



DOMESTIC PARTNER BENEFITS

THE STATE OF MARRIAGE EQUALITY

On June 26, 2013 the Supreme Court of the United States issued a decision in *U.S. v. Windsor*, invalidating Section 3 of the Defense of Marriage Act (DOMA), which had previously restricted federal recognition of marriages to those between different-sex couples. The Court held that restricting U.S. federal interpretation of "marriage" and "spouse" to apply only to different-sex marriages, is unconstitutional under the Due Process Clause of the Fifth Amendment, because doing so "disparage[s] and ... injure[s] those whom the State, by its marriage laws, sought to protect in personhood and dignity." This decision allows the federal government to recognize same-sex marriages for the purposes of crucial federal benefits and programs including Social Security and Taxation.

Federal agencies have implemented the Windsor decision based on the authorizing statute of each federal program and benefit that they administer. In practice, this means that individual benefits may vary depending on the state where the couple lives. For same-sex couples across the country, the Windsor decision means spousal recognition for many federal benefits for the first time.

Until marriage equality is available to all employees in every state, domestic partner benefits are still necessary to ensure equal pay for equal work.

As a best practice and to ensure compliance with all state and local employment laws, HRC recommends that employers ensure that all legally married employees, regardless of the sex of their partner, are treated equally and have equal access to all company benefits and programs. Companies operating in states without marriage equality or protections for LGBT employees may continue to offer domestic partner benefits to only same-sex couples. For companies operating in states with marriage equality domestic partner benefits should be made equally available to all employees regardless of sexual orientation. This will ensure that the company policy is in full compliance with state and local laws prohibiting discrimination on the basis of sexual orientation.

CONTINUED NEED FOR DOMESTIC PARTNER BENEFITS

The Human Rights Campaign cautions employers against eliminating domestic partner benefits given the growing number of states allowing for marriage equality, and a possible positive ruling from the Supreme Court case *Obergefell v Hodges* this month.

Best in class employers continue to offer domestic partner benefits to same and opposite sex couples, accounting for family diversity within a competitive talent pool. Trend lines point to employers viewing partner benefits as inclusive of the workforce – beyond the LGBT community – as evidenced by a **majority of the Fortune 500 offering same-sex partner benefits (66%) and of this majority, close to two-thirds (62%) extend the same options to employees with opposite-sex partners.** Furthermore, of those 781 participants in the Corporate Equality Index, 93% provide medical and comprehensive health benefits such as vision, dependent medical and Consolidated Omnibus Budget Reconciliation Act (COBRA)-equivalent coverage. While not a mandate in the CEI criteria, of the providers providing partner health insurance, 71% provide them to both same and opposite-sex partners.

Even with marriage equality as a growing option, domestic partner benefits continue to provide equal treatment among a patchwork of comprehensive legal protections available for LGBT people state to state. **Marriage equality still leaves LGBT employees open to risks and vulnerabilities that their non-LGBT counterparts are not subject to.** For example, without complete non-discrimination protections on the basis of sexual orientation and gender identity state to state, same-sex couples can **be denied credit, housing, and public accommodation once they have been "outed" by a public marriage license as required by their employer to maintain access to benefits** (essentially equal pay for equal work). These distinctions in protections are significant, and expose LGBT people to risks when traveling or relocating to states that might honor their marriage license, but are still legally able to discriminate against them in very core aspects of their daily lives.

The uncertainty of how couples who decide to marry will be treated across state lines in the absence of nondiscrimination protections in employment, credit, housing, and public accommodation leads HRC to caution employers from eliminating domestic partner benefits. Employees should not be required to marry in order to maintain equal compensation through their access to domestic partner benefits for their families.