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Employee Benefits | Life Insurance | Risk Management

TO: Clients of Sitzmann Morris & Lavis Insurance Agency

RE: Supreme Court Decision on Same-sex Marriage

On June 26, 2015, the U.S. Supreme Court announced its decision in *Obergefell v. Hodges*. In a 5-4 decision they ruled that the U.S. Constitution guarantees same-sex couples the right to marry. The ruling means that same-sex couples have the right to be married in their own states and to have their marriages recognized as valid in every other state

Effective Date: The ruling is effective immediately, which means all states must start (or continue) issuing marriage licenses to same-sex couples on the same terms as opposite-sex couples.

Background: It was two years ago on June 26, 2013, that the Court struck down Section 3 of the Defense of Marriage Act (DOMA), which defined marriage as a union between one man and one woman as husband and wife. In a 5-4 decision, the court found this definition to be a violation of equal protection rights under the U.S. Constitution, holding that same-sex couples who are legally married under state law will be entitled to equal treatment under federal law with regard to income taxes and federal benefits. However, that Court's ruling did not establish a constitutional right to same-sex marriage.

Key Points: The Supreme Court was asked to rule on two specific issues—the power of the states to ban same-sex marriages and the power of the states to refuse to recognize same-sex marriages performed in other states.

The Supreme Court held that marriage is a fundamental right under the Constitution for both opposite-sex and same-sex couples. Thus, the Supreme Court ruled that every state must allow marriage between two people of the same sex and must also recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

The Supreme Court noted that the institution of marriage has evolved over time in response to developments in law and society. The Supreme Court outlined four legal principles that supported its ruling that marriage is a fundamental right for both same-sex and opposite-sex couples. These legal principles are as follows:

- The right to personal choice regarding marriage is inherent in the concept of individual autonomy;
- The right to marry supports a two-person union unlike any other in its importance to the committed individuals;
- Marriage safeguards children and families; and
- Marriage is a keystone to our social order.

Action Items: Employers will generally be required to treat employees in same-sex marriages the same as employees in opposite-sex marriages for many federal and state law purposes. Many state leave law rights for legally married spouses should extend to employees with same-sex spouses. Same-sex married couples should be subject to the same state tax rules as opposite-sex married couples.

1. **Plan Eligibility.** Plan sponsors and insurance policy issuers in all states must now define “spouse” to include same-sex spouses as eligible spouses. Previously this was limited to those states recognizing same-sex marriage.
2. **Domestic Partnerships.** As with the abolition of DOMA, there may be a significant reduction in the number of Domestic Partnerships (DPs) now that marriage is an option. However, DPs remain subject to imputed income rules. California is the only state requiring fully-insured policies to cover Registered DPs. Those policies will remain as they are today, pending any further action by the California legislature.
3. **Impact on State Imputed Income and Post-tax Deductions.** It is our current understanding that the recognition of same-sex spouses in all states will not affect the existing imputed income collected so far in 2015. Going forward premiums for same-sex spouses should no longer be subject to state imputed income or be paid post-tax, but can immediately begin to be withheld on a pre-tax basis.
4. **New Marriage.** Since many same-sex couples may be getting married in the near future and since marriage is a qualifying event under benefit plan eligibility rules and Section 125 plans, employers should allow enrollment rights.

What's Next: Now that marriage is an option in all states it remains to be seen whether employers and carriers will continue offering coverage to domestic partners.

We will provide you with more detail as it becomes available. As always, contact your SML Account team if you have any questions.

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