



Guidance Released on Same-sex Marriage Under ERISA

Provided by Benefit Administration Company, LLC.

Quick Facts

- DOL released guidance on Sept. 18, 2013.
- Same-sex couples treated as married for purposes of ERISA if married in jurisdiction that recognizes same-sex marriage.
- Ruling applies even if the couple resides in a jurisdiction that does not recognize same-sex marriage.
- Future guidance will be issued by EBSA.

For purposes of ERISA, the terms “spouse” and “marriage” include same-sex couples validly married under state law, regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage.

On Sept. 18, 2013, the Department of Labor (DOL) issued [Technical Release 2013-04](#) to provide guidance to employee benefit plans, plan sponsors, plan fiduciaries and plan participants and beneficiaries on the meaning of “spouse” and “marriage” under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code).

For purposes of ERISA and the Code, the terms “spouse” and “marriage” include same-sex couples validly married under state law, regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage. However, these terms do not include persons in relationships recognized by a state that are not a marriage under state law (such as a domestic partnership or a civil union).

The DOL issued this guidance to implement the U.S. Supreme Court’s decision on the Defense of Marriage Act (DOMA). On June 26, 2013, the Court held that same-sex couples who are legally married under state law are entitled to equal treatment under federal law with regard to income taxes and federal benefits.

Overview of Technical Release 2013-04

In Technical Release 2013-04, the DOL clarified that, for purposes of ERISA and the Code, the

term “spouse” will be read to refer to any individuals who are lawfully married under any state law, including same-sex couples who were legally married in a state that recognizes same-sex marriages, but who are living in a state that does not recognize same-sex marriages. Similarly, the term “marriage” will be read to include a same-sex marriage that is legally recognized as a marriage under any state law.

The term “state” includes any U.S. state, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Northern Mariana Islands, any other territory or possession of the United States, and any foreign jurisdiction having the legal authority to sanction marriages.

The terms “spouse” and “marriage” do not include individuals in a formal relationship recognized by a state that is not defined as a marriage under state law (such as a domestic partnership or a civil union) regardless of whether the individuals who are in these relationships have the same rights and responsibilities as those individuals who are married under state law. This applies to both same-sex and opposite-sex couples.



According to the DOL, it implemented the rule recognizing marriages that are valid in the state in which they were celebrated, regardless of the married couple's state of domicile, to ensure uniformity in application of ERISA and the Code. The DOL stated that a rule for employee benefit plans based on state of domicile would substantially burden and raise significant challenges for employers that operate in more than one state or whose employees move to another state while entitled to benefits.

In addition, the DOL noted that recognition of marriage based on domicile could prevent qualification for tax exemption, lead to loss of vested rights if spouses move and complicate benefits determinations if spouses live in different states.

Other Guidance

On Aug. 29, 2013, the Treasury and the Internal Revenue Service (IRS) issued [Revenue Ruling 2013-17](#), stating that same-sex couples who are legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes. Like Technical Release 2013-04, the IRS' ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or not, to ensure uniformity in application of the Code.

In developing Technical Release 2013-04, the DOL coordinated with the Treasury and IRS, and agreed with those agencies that recognition of "spouses" and "marriages" based on the validity of the marriage in the state of celebration, rather than based on the married couple's state of domicile, promotes uniformity in administration of employee benefit plans and affords the most protection to same-sex couples.

In addition, the DOL's Employee Benefits Security Administration (EBSA) intends to issue future guidance addressing specific provisions of ERISA and its regulations. Additional information will be made available on the [EBSA website](#).

What this Means for Employers

The DOL and IRS guidance does not specifically mandate that employers cover same-sex spouses under their health plans. However, employers with fully-insured plans that offer spousal coverage may be required by state law to cover both opposite-sex and same-sex spouses. Also, employers in other states or with self-funded plans that cover opposite-sex spouses but not same-sex spouses could be at risk of discrimination lawsuits.

Employers are, however, required to offer same-sex spouses certain workplace protections (such as FMLA leave). In addition, if same-sex spouses are, in fact, covered under the health plan, then they must be treated the same as other spouses.

Employers should carefully review the eligibility terms of their benefit plans to ensure that they are in compliance with applicable law and that the terms clearly reflect their decisions regarding eligibility.

Source: Department of Labor

