Retirement benefits no longer at risk for same-sex couples

Labor Dept. ruling a boost for employers, retirement plan sponsors, 401(k) service providers

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interpreting the consequences of a landmark Supreme Court ruling on same-sex marriage is sweeping away couples' fears that their retirement benefits could disappear if they relocate.

The ruling, which defines legally married same-sex couples as spouses as it applies to retirement plans regardless of where they live, could also be a major coup for employers, retirement plan sponsors and 401(k) service providers, according to industry observers.

Record keepers, in particular, dreaded the prospect of benefits changing every time legally married same-sex couples relocated, while sponsors and providers feared administrative burdens and the risk of litigation.

"We appreciate EBSA's guidance because it furthers the consistent application of rules for same-gender couples," Larry Goldbrum, general counsel for the SPARK Institute Inc., said in a statement, referring to the Labor Department's Employee

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Benefits Security Administration. The advocacy group for retirement plan record keepers and service providers had pushed for Monday's ruling.

While the Supreme Court's June 26 decision in United States vs. Windsor eliminated a federal ban on same-sex marriage, it left intact an inconsistent patchwork of state laws on spousal benefits.

Monday's **ruling** by the DOL hews closely to the Internal Revenue Service's and Treasury Department's Aug 29 **Ruling 2013-17**, which expands “spouse” and “husband and wife” to include gay couples in the context of federal tax law.

Further, both the IRS/Treasury ruling and the DOL guidance elect what is known as a “state of celebration” standard, meaning they recognize same-sex marriages based on where the couples were married, rather than the state in which they live.

Had the agency decided to recognize marriages based on where couples reside — a “state of domicile” standard — the validity of spousal elections and consents on plans could have changed if the spouses were to move to a jurisdiction that didn't recognize their marriage.

“It's almost a way to import same-sex marriage into those states that are currently resisting it,”

said Scott Squillace, principal and founder of Squillace & Associates PC, an LGBT-focused estate planning legal practice.

Mr. Squillace noted that same-sex couples with benefit designation forms will need to ensure those forms are still valid because they require a spouse's consent. And while tax and retirement plan benefits will not change when couples move from state to state, Social Security benefits still may be in jeopardy.

“It's confusing for people around the country, and it's confusing for advisers who don't pay attention to this stuff,” Mr. Squillace said.

SPARK had called on federal officials to provide guidance on how best to administer retirement plans after the Supreme Court's decision to repeal Section 3 of the Defense of Marriage Act. Several groups, including SPARK, the American Benefits Council and the ERISA Industry Committee, supported the use of a “state of celebration” definition.

Some legal issues still remain unresolved, including whether the ruling applies retroactively, according to Brad Campbell, counsel with Drinker Biddle & Reath LLP.

“If the tax code is essentially constitutional, should that require companies to go back and be responsible for fixing whatever might flow from

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those errors?" Mr. Campbell said. "The most reasonable and appropriate position is to say, 'no.' The Supreme Court's decision shouldn't expose employers to potential lawsuits and costs associated with going back to retroactively address a host of situations."

The Labor Department's guidance not only covers the entire U.S. and Puerto Rico, but all of the U.S. territories, including the Virgin Islands, American Samoa, Guam and the Northern Mariana Islands.

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