

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.

benefits and protections for employees' spouses. There may also be uncertainty about how the federal government will treat marriages for particular purposes if the state where the employee works and/or lives does not respect the employee's marriage. Federal employees and their spouses with questions about these issues may contact OPM and their agency's Chief Human Resources Officer. Our organizations will endeavor to provide any updates as we acquire more information. Please contact the legal organizations listed below if you encounter problems or have additional questions.

#### HEALTH BENEFITS FOR SPOUSES UNDER THE FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM (FEHB)

Spouses of federal employees may be eligible for employer-provided health insurance coverage. The types of health plans, premium levels, and application requirements may vary depending on the federal agency and the state where the employee works or lives. [www.opm.gov/healthcare-insurance/healthcare/plan-information](http://www.opm.gov/healthcare-insurance/healthcare/plan-information) Employees should check with OPM and/or their agency human resources staff for more information.

Q. If a federal employee gets married, can the employee add the new spouse to the employee's health insurance plan?

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American Civil Liberties Union | Center for American Progress | Family Equality Council | Freedom to Marry | Gay & Lesbian Advocates & Defenders  
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Q. If a federal employee divorces, can the former spouse retain FEDVIP dental and vision coverage?

A. No. Unlike for FEHB health insurance coverage, former spouses of federal employees are ineligible for continued FEDVIP coverage. See [opm.gov/healthcare-insurance/dental-vision/eligibility/](https://www.opm.gov/healthcare-insurance/dental-vision/eligibility/)

Q. Can the spouse of a federal employee who retires continue dental and vision insurance coverage on the employee's FEDVIP plan?

A. Yes.

Q. If the employee lives in a state that does not recognize the marriages of same-sex couples, is the employee still entitled to FEDVIP coverage for a same-sex spouse?

A. We believe that the federal employee should be entitled to have his or her validly-entered marriage respected by the federal government for purposes of FEDVIP spousal coverage, even if the employee lives in a state that does not respect the employee's marriage. There is no statute or regulation prohibiting FEDVIP coverage for such spouses. However, there may be some initial uncertainty about how the federal government will process applications for spousal coverage from employees living in states that do not respect the employees' marriages. If an employee encounters problems or questions, they should contact a legal organization listed below.

#### FEDERAL LONG TERM CARE INSURANCE PROGRAM (FLTCIP)

The Federal Long Term Care Insurance Program (FLTCIP) provides long term care insurance to help pay for costs of care when enrollees need help with activities they perform every day, or if they have a severe cognitive impairment, such as Alzheimer's disease. Federal employees and annuitants and their qualified relatives are eligible to apply for insurance coverage under the FLTCIP. Spouses, as well as domestic partners, are qualified relatives who can apply for the long term insurance coverage. See [opm.gov/healthcare-insurance/long-term-care/](https://www.opm.gov/healthcare-insurance/long-term-care/)

have been expressly designated as the beneficiary of the employee's FEGLI policies and protected as a beneficiary.

If an employee or spouse encounters problems or questions, they should contact a legal organization listed below.

FEDERAL FAMILY AND MEDICAL LEAVE ACT (FMLA)  
BENEFITS AND OTHER FAMILY-RELATED LEAVE

Federal employees are entitled to take leave under certain circumstances to care for a spouse or to arrange and attend a spouse's funeral.

**Q. Can a federal employee take FMLA leave to care for a spouse?**

**A. Yes.** Under the Family and Medical Leave Act of 1993 (FMLA), federal employees are entitled to a total of up to 12 work weeks of unpaid leave during any 12-month period for:

- t the care of a spouse who has a serious health condition, or
- t in the event of a qualifying exigency arising because a spouse is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces.

Under certain conditions, an employee may use the 12 weeks of FMLA leave intermittently. An employee under some circumstances may elect to substitute annual leave and/or a limited amount of sick leave for any unpaid leave under the FMLA. FMLA leave is in addition to other paid time off.



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residence) in determining whether to recognize a marriage. However, the IRS has recognized “common law” marriages for tax purposes as long as they were valid where celebrated, even if they are not recognized in the state of domicile. In our mobile society, it would make more sense for the IRS to use a place of celebration rule, under which a marriage is recognized by the federal government so long as it was valid where entered, for all marriages and not just for “common law” marriages. Our organizations are encouraging use of the place of celebration rule as broadly as possible. If an employee or spouse encounters problems or questions, they should contact a legal organization listed below. This is not intended as tax advice; consult with your own tax advisor for information about your own situation.

RETIREMENT AND SURVIVORS BENEFITS (CSRS, FERS)

Eligible federal employees are entitled to federal retirement benefits under

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## ETHICS AND CONFLICTS OF INTERESTS RULES GOVERNING FEDERAL EMPLOYEES AND THEIR SPOUSES

Federal employees and their spouses should also be aware that ethics and conflicts of interest rules governing the conduct of federal employees and their spouses will now apply to same-sex married couples. Federal employees and same-sex spouses should be alert to such considerations and seek advice from their own counsel if they have questions. The United States Office of Government Ethics may offer additional information. [www.oge.gov](http://www.oge.gov)



## FOR MORE INFORMATION, CONTACT

LAMBDA LEGAL  
[lambdalegal.org](http://lambdalegal.org)

GAY & LESBIAN ADVOCATES & DEFENDERS  
[glad.org](http://glad.org)

AMERICAN CIVIL LIBERTIES UNION  
[aclu.org/lgbt](http://aclu.org/lgbt)



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