

PRIVATE EMPLOYMENT ISSUES AND BENEFITS

Although discrimination against married same-sex couples under the Defense of Marriage Act (DOMA) did not bar private employers from offering most spousal employment benefits to employees' same-sex spouses, it subjected same-sex couples to discriminatory treatment and other forms of unequal treatment. For example, married same-sex couples had to pay additional income taxes on the value of employer-sponsored health insurance that married different-sex couples did not need to pay, and married same-sex couples who divorced were barred by federal law from obtaining a court order sharing pension benefits as part of a divorce agreement.

Now that DOMA has been struck down, we urge married same-sex couples with employer-sponsored retirement benefits to immediately review your beneficiary designations and form of benefit elections to ensure that your designations and elections are accurate and complete, and that they reflect your wishes. Your rights may have changed, and waiting may hurt you and your family.

This Guidance addresses some of the marriage-related issues regarding employer-sponsored retirement plans and health insurance benefits that are regulated by federal law.

For more information about federal regulation of employee benefits, see:

www.dol.gov/ebsa/faqs/faq_compliance_pension.html

www.aging.senate.gov/crs/pension7.pdf

What rights does federal law provide to married employees with respect to employer-sponsored health insurance benefits?

If your spouse is covered under your employer's health plan and you are considered validly-married by the federal government, you and your spouse should be eligible for the following additional federal protections:

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What rights does federal law provide to married employees with respect to private retirement benefits?

If you are considered validly married by the federal government and eligible for a pension or other employer-sponsored retirement plan, federal law has specific requirements that your plan must follow in order to maintain tax-qualified status:

- The default form of benefit for a defined benefit pension plan (i.e., a traditional pension that guarantees a specific monthly payment at retirement) must be a joint and survivor spousal annuity (QJSA). This means that a portion of your pension will continue to be paid to your spouse if you die before your spouse does, although you and your spouse together can decide to waive this right and name someone else as the beneficiary.
- If you die before reaching retirement age, your spouse is entitled to a pre-retirement survivor annuity (QPSA) from a defined benefit pension plan.
- Your spouse has to give written consent if you want to name anyone else as your beneficiary for your retirement plan.
- Being married entitles your spouse to more options in taking distributions (regarding the timing of payments, and the amount you can receive) from your retirement plan, and to preferential tax treatment of those distributions.
- Your plan may also allow you to take money out of a retirement account without tax penalty to pay expenses like medical costs, tuition, or funeral expenses for your spouse.
- Finally, if you get divorced, the courts can ensure that your ex-spouse receives a portion of your retirement plan assets as part of the divorce agreement. This is called a Qualified Domestic Relations Order, or QDRO.

Which marriages will be considered valid by the federal government for benefits purposes?

- If you live in a state that respects your rights...

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What if my spouse retired or died while DOMA was in effect, and I was told I was not entitled to a spousal survivor annuity?

It's possible, though not certain, that you still might be able to receive



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