



ERISA Group Benefits Newsletter July 2015

Recent Court Decisions Impacting Employee Benefit Plans

Supreme Court Upholds ACA Subsidies

On June 25th, the Supreme Court issued its decision in *King v. Burwell*, ruling that tax credits to subsidize the cost of health insurance under the Affordable Care Act ("ACA") are available to individuals that participate in either a state or the federal exchange. The plaintiffs in *Burwell* argued that the language of ACA limited the availability of the subsidies only to individuals that obtain coverage through a state exchange. There are 34 states that have not set up their own state exchange and instead utilize the federal exchange. As a result of the Supreme Court's decision, qualifying individuals will remain eligible for premium subsidies regardless of whether they obtain coverage through a state or federal exchange.



Supreme Court's *Obergefell* Decision On Same-Sex Marriage

On June 26th, the Supreme Court ruled that same-sex couples may exercise the right to marry in all 50 states and that states may not refuse to recognize a lawful marriage performed in another state based on the marriage's same-sex character.

Employers that have already been offering benefits to same-sex spouses are the least affected by the *Obergefell* decision. If an employer has previously offered benefits to same-sex spouses, no changes are required with respect to the plans or coverage. However, employers with employees in states that did not previously recognize same-sex marriages for tax purposes may need to update their procedures for state tax withholding and reporting.

Employers that have not previously offered benefits to same-sex spouses will need to determine whether they will, or may be required to, extend coverage to same sex spouses. Some spousal benefits are mandated by federal law. As a general matter, "spouses" for purposes of retirement plans and tax purposes include same sex spouses. One pending question involves whether health and welfare coverage is required to be offered to same sex

spouses in the same manner as it is offered to opposite sex spouses. There is no requirement that health and welfare coverage be offered to spouses. However, employers providing benefits to opposite-sex spouses may be required to provide the same benefits to same-sex spouses in order to avoid nondiscrimination claims.

Although no federal law explicitly prohibits discrimination based on sexual orientation, there is some indication that treating same-sex spouses differently than opposite-sex spouses may be prohibited under federal law. The EEOC takes the position that discrimination based on an employee's sexual orientation is forbidden as sex discrimination by Title VII of the Civil Rights Act of 1964. If the EEOC's position is adopted, and spousal benefits are provided to a male employee's wife, but not to a female employee's wife, for example, the employer has arguably discriminated against the female employee.

Some states also have laws that explicitly bar discrimination on the basis of sexual orientation and all states prohibit discrimination based on sex. If challenged, the practice of offering lesser benefits to same-sex spouses could be interpreted as violating these laws.

Employers that have been offering domestic partner benefits may also want to review their practices. One reason for adding domestic partner coverage was the inability of same sex couples to marry. As a result of the *Obergefell* decision, employers should evaluate whether they want to eliminate domestic partner benefits now that same-sex marriage is available to all couples. Eliminating domestic partner benefits may ease certain administrative burdens, including imputed tax issues.

NY Case Alleges Employer Reduced Workers' Hours to Avoid ACA Obligation

A class action lawsuit (*Marin v. Dave & Busters, Inc.*) was filed in New York alleging that the employer reduced the work hours of employees to keep them from attaining full-time status under ACA and avoiding ACA's employer mandate to offer them health coverage. Specifically, the suit alleges that the employer violated ERISA Section 510 which prohibits interfering with an employee's attainment of benefits.

ACA generally requires certain employers to offer health coverage to their full-time employees or face potential penalties. Full-time employees, for this purpose, are defined as those regularly working at least 30 hours per week. As employers struggle to comply with ACA and to establish procedures for determining full time employees, some employers have reduced or otherwise "managed" hours for employees to classify the employees as part-time (less than 30 hours per week) in order to avoid penalties under ACA.

This case warrants close monitoring, as it challenges employer practices that seek to minimize ACA employer mandate liability. In light of this case, we would recommend that employers review their compliance strategies and their employment classifications as they pertain to their employees' available health care benefits.



Please note that this Benefits Alert only highlights the most significant changes in the law. The details of these changes are complex and beyond the scope of this alert. We look forward to discussing these changes and how they may impact your plans with you. Please contact any of the following members of our Employee Benefits and Executive Compensation Practice if you have questions or would like additional information.



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