

What Marriage Equality Means Financially

The Supreme Court decision has brought significant change.

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When the Supreme Court voted to repeal Section 3 of the Defense of Marriage Act (DOMA) on June 26, it opened financial doors previously closed to same-sex couples. Unfortunately, not all of these doors may open in certain states. A major complication must be resolved: while the high court's opinion stated a legal principle, it didn't say exactly how it should be applied.¹

Will the SCOTUS ruling apply in all 50 states? Gay and lesbian couples can now access marriage-based federal benefits in the 12 states permitting same-sex marriage (plus the District of Columbia). That is clear. Can these couples receive these benefits in the 38 states barring same-sex marriage? That is unclear. The SCOTUS ruling did not instruct these states to recognize the legality of gay and lesbian marriages performed elsewhere.^{1,2,3}

To complicate matters further, not all federal agencies define a lawful marriage using the same criteria. They look to state laws. Some determine the legality of a marriage by the "place of celebration" – that is, the state in which the marriage occurred. Others go by the state of current residence, in which a same-sex marriage may not be legal.¹

So will the Obama administration tell the IRS, the Social Security Administration and the Department of Veterans Affairs to use the "place of celebration" marriage standard with regard to all federal benefits? It remains to be seen. Here is what is changing as a result of the ruling in 12 states and possibly others.

Same-sex couples in 12 states can now file joint federal tax returns. Both married couples and partners may now file jointly. This move may not always produce a tax savings, but it sure is nice to have the option.²

In these 12 states, same-sex couples may now access federal benefits. In terms of Social Security, a surviving spouse in a same-sex marriage now has the option to switch to a deceased spouse's benefits if they are greater. Gay and lesbian spouses may now plan Social Security strategies that can potentially increase retirement income, such as one spouse claiming Social Security early and later switching to spousal benefits. Same-sex couples living in states that recognize gay marriage are now eligible for federal government employee spousal pension benefits as well, and have equal access to the Family and Medical Leave Act. The federal Office of Personnel Management said on June 28 that it would give equal health and pension benefits to "all legally married same-sex spouses" regardless of where they live.^{1,2,4}

Assets may pass to a surviving spouse without risk of estate tax. The SCOTUS ruling paves the way for one spouse in a same-sex marriage to leave an unlimited amount of assets to a surviving spouse. Prior to the ruling, a surviving spouse faced the possibility of paying federal

estate taxes on inherited assets from a spouse if they exceeded \$5.25 million. High net worth gay and lesbian couples commonly bought life insurance to address the possibility of this estate tax burden. Now, they may need less insurance coverage.⁴

No taxation of employer-sponsored health benefits. Thanks to DOMA, same-sex spouses had to pay taxes on these benefits – a cost averaging c. \$1,000 year. The June 26 Supreme Court decision announced an end to all that. It also mandated that employees married to same-sex spouses receive COBRA coverage.^{4,5}

Businesses face question marks. Employers have been given a mission – the benefit plans they sponsor now must comply with the change in federal law. The largest employers have the toughest assignment here, as what is now legal in one state may not be in another. They are anxiously awaiting guidance from the IRS, the DOL and the White House, but who knows how quickly it will arrive. It should be noted that roughly 62% of Fortune 500 firms offer same-sex domestic partner health benefits; that percentage may soon increase.⁵

Beyond health benefits, the SCOTUS decision also affects retirement plans like 401(k)s, 403(b)s, pensions, and IRAs. Under federal law, heterosexual spouses inherited such retirement accounts by default unless the beneficiary form signed by the deceased spouse dictated otherwise. Now surviving gay and lesbian spouses will be able to count on the same thing.^{4,6}

Are gay & lesbian couples eligible for retroactive tax treatment? Here is another unresolved question. It is possible that married same-sex couples can pursue tax breaks in tax years that are still open (2010-12)?²

Now is a good time for same-sex couples to revisit their financial and estate plans, with the hope that the federal government acts quickly to resolve the legal ambiguities.

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Citations.

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