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Beyond DOMA; More Changes Coming For Employers?

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Last summer, the United States Supreme Court's decision to overturn a portion of the Defense of Marriage Act (DOMA) in *Windsor v United States* prompted Michigan employers to reevaluate their handbooks and benefits plans as they relate to spousal benefits for same sex spouses. The *Windsor* decision may only be the beginning of potential changes to employment laws regarding same sex marriages and sexual orientation. Lawsuits pending in Michigan and other states challenging state bans on same sex marriage could dramatically impact human resources practices.

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Recent Developments in Marriage and Sexual Orientation Laws

February 13, 2014 – United States District Court finds Virginia's ban on same sex marriage violates the United States Constitution. The Court rules that the state ban interferes with the fundamental right of marriage and the ban is not narrowly tailored to serve a compelling state interest.

February 10, 2014 - U.S. Attorney General Eric Holder issues memorandum announcing that the Department of Justice will recognize same sex marriages which were lawfully entered into under state law, when interpreting and enforcing all federal statutes, rules and regulations, including the federal Bankruptcy Code, the Bureau of Prisons policies, and the Federal Rules of Evidence.

January 21, 2014 – Federal Court of Appeals for the Ninth Circuit rules that a law which classifies individuals based upon sexual orientation violates the Equal Protection Clause of the United States Constitution unless the law can withstand "heightened scrutiny."

December 20, 2013 – United States District Court for the District of Utah rules that Utah's state ban on same-sex marriage violates the Equal Protection Clause of the United States Constitution.

November 12, 2013 - Trenton becomes 31st Michigan municipality to adopt sexual orientation anti-discrimination laws.

August 29, 2013 – Internal Revenue Service issues Revenue Ruling 2013-17 announcing that the IRS will recognize all legal same sex marriages for federal tax purposes.

June 26, 2013 – United States Supreme Court overturns portion of federal Defense of Marriage Act which defined "marriage" and "spouse" for purposes of application of federal law. The Court decides that individual states are free to define these terms.

Can Employers Discriminate Against Employees Based Upon Sexual Orientation?

A variety of federal, state and local laws prohibit employers from discriminating against employees based upon particular characteristics.

Federal law. Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees in the terms and conditions of employment "because of ... race, color, religion, sex or national origin." Title VII does not prohibit employers from discriminating against employees because of "homosexuality" or "sexual orientation."

State law. Michigan's Elliott Larsen Civil Rights Act prohibits employment discrimination in the State of Michigan based upon enumerated characteristics such as gender, race and national origin. The Act does not expressly prohibit discrimination by employers based upon "homosexuality" or "sexual orientation."

Local law. Beginning in 1972, Michigan municipalities began adopting local ordinances which prohibited employers from discriminating against employees based upon sexual orientation and gender identity. Today over 25 municipalities, including Detroit, Grand Rapids, Lansing and Traverse City, have such ordinances.

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