

THE LEGAL REPORT

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Marriage Announcement

Windsor to Obergefell

In *United States v. Windsor* (“*Windsor*”), the U.S. Supreme Court ruled that same-sex couples who were married in states where same-sex marriages were legal are to receive the same treatment under federal law as married opposite-sex couples. However, the Supreme Court’s ruling in *Windsor* did not strike down state bans on same-sex marriage. In states like Michigan, which had passed an amendment to the Michigan Constitution banning same-sex marriage, the *Windsor* decision created more questions than it answered and left the state law in Michigan in a state of uncertainty.

Specifically, the *Windsor* decision created questions for Boards of Trustees of public employee retirement systems when it came to administering their plans and providing survivor benefits. For example, police and fire retirement systems that operate pursuant to the provisions of Public Act 345 of 1937 [MCL 38.551 *et seq.*] (“Act 345”) (and many other plans with similar language in their plan documents) offer options to their members that would provide a benefit to the member’s “spouse,” defined as “the person to whom the retirant was legally married on both the effective date of retirement and the date of death.” MCL 38.556(1)(h). So if a member was married in one of the 36 states (or the District of Columbia) where same-sex marriage was legal, would that member’s spouse be considered a spouse under the language of Act 345? Complicating the situation further, a number of federal government agencies began recognizing same-sex marriages as valid and legally binding, including the Internal Revenue Service (“IRS”).

On June 26, 2015, on the second anniversary of the *Windsor* decision, the U. S. Supreme Court issued an opinion in *Obergefell v. Hodges* (“*Obergefell*”) which held that the Due Process and Equal Protection clauses of the Fourteenth Amendment guarantee the right to marry as a protected fundamental liberty, and that the same right to marry applies to same-sex individuals as it does to opposite-sex individuals. In *Obergefell*, groups of same-sex individuals sued their relevant state agencies in Ohio, Michigan, Kentucky, and Tennessee to challenge the constitutionality of those states’ bans on same-sex marriage or refusal to recognize legal same-sex marriages that occurred in jurisdictions that provided for such marriages. In all the cases, the trial court found in favor of the same-sex couples. The U.S. Court of Appeals for the Sixth Circuit reversed and held that the states’ bans on same-sex marriage and refusal to recognize marriages performed in other states did not violate the individuals’ Fourteenth Amendment rights to equal protection and due process. The *Obergefell* decision reversed the Sixth Circuit and holds that the states (including Michigan) must allow same-sex individuals to marry and that the states must recognize same-sex marriages from other states.

So, what does this mean for Michigan public employee retirement systems?

First, when determining who qualifies as a member's "spouse" for survivor and other benefits, a member's same-sex spouse must be given the same treatment that would otherwise be provided to an opposite-sex spouse. This should not, in most situations, require an amendment to the plan document. A plan amendment would only be needed if, for example, the plan references "opposite-sex spouse" when defining a marital relationship. As long as a plan utilizes terms such as "spouse," "legally married spouse," or "spouse under Federal law," without distinction between a spouse of the same-sex or opposite-sex, the plan should not need an amendment. For example, the definition of "spouse" in Act 345, discussed above, defines spouse in a manner consistent with Obergefell. Trustees and/or plan administrators may want to review any policies, procedures or forms to ensure compliance.

Additionally, under the survivor beneficiary options in many plan documents, an individual is required to have an "insurable interest" in the life of a member to be nominated as a survivor beneficiary. In general, a person usually has an insurable interest where there are reasonable grounds, founded on the relations of the parties, either pecuniary or contractual or by blood or affinity, to expect some benefit or advantage from the continuance of the life of the insured. 44 CJS, Insurance, § 203.a, p 903. While it may be difficult to define in all cases what constitutes an insurable interest, clarity has been provided by the Obergefell decision that a member's spouse who is married to the member through a valid and legal marriage (same-sex or opposite-sex) would meet the insurable interest standard and would be eligible to be nominated as a survivor beneficiary.

In summary, while much discussion and legal proceedings have surrounded the marriage issue, the administration of public employee benefits has been simplified by the marriage of Windsor and Obergefell.

IMPORTANT NOTE: This summary is intended to be informational only and is intended to provide a general overview. Reference should be made to relevant laws and regulations in addressing specific questions. This information should not be considered the rendering of legal advice or other professional services and Trustees should consult with their plan professionals regarding the implications of the matters contemplated herein.