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Milliman

CLIENT ACTION Bulletin
Employee Benefits

# U.S. Supreme Court Rules in Favor of Same-Sex Marriages and the Affordable Care Act Subsidies

**SUMMARY**

**The U.S. Supreme Court has handed down decisions on two significant cases that have direct or indirect implications for employer-sponsored retirement and healthcare benefit plans.**

**This *Client Action Bulletin* summarizes these cases of interest for employers that sponsor such plans.**

**DISCUSSION**

## Same-Sex Marriages Must Be Recognized in All States

The Court, by a vote of 5-4, determined that state laws barring same-sex marriages or failing to recognize same-sex marriages legally performed out of state are unconstitutional (*Obergefell v. Hodges* (No. 14-556, June 26, 2015)). The Court's decision legalizes same-sex marriages in all 50 states.

***All employers*** are affected by the Court's ruling. Employers in states that do not allow or recognize same-sex marriages must now comply with the Court's decision. In some instances, state regulatory agencies will have to provide necessary guidance. For example, payroll administration and similar operations will require modifications to accommodate tax withholding or the removal of imputed taxes for married same-sex couples.

For sponsors of retirement or health and welfare benefit plans, a review of the programs with legal counsel, relevant third-parties (e.g., health insurance or retirement plan administrators), and other professional advisors will be prudent. Employers providing coverage for "domestic partners" may consider extending coverage only for "spouses," now that same-sex marriages are legal nationwide. Employers with deeply held religious beliefs opposed to same-sex marriages may consider eliminating "spousal" coverage for benefits entirely, but doing so may harm employees in opposite-sex marriages. Communications materials, payroll and benefits administrative systems, and benefit programs that are not subject to federal laws also must be reviewed and modified accordingly.

## Federal Subsidies Available for Health Exchange Insurance Purchases

The Court ruled, by a vote of 6-3, that the Affordable Care Act's (ACA) federal personal income tax subsidies are available to people purchasing health insurance from all health insurance exchanges, whether the exchanges are established by an individual state or run by the federal government (*King v. Burwell* (No. 14-114, June 25, 2015)). The decision ensures that people living in the states that did not establish an exchange will not lose the subsidies that make health insurance more affordable, and it relieves lawmakers from having to immediately craft legislation to address, maintain, or restore the subsidies for Americans availing themselves of the coverage.

Looking at the overall structure of the ACA, the Court said that Congress passed the law to "improve health insurance markets, not to destroy them." The majority opinion concluded, "If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter."

***For group health plan sponsors,*** the Court's ruling changes nothing about the ACA as the law is currently structured. For example, the employer mandate continues to apply, the information reporting requirements remain in force, and the "Cadillac" tax on high cost healthcare plans will be effective in 2018 unless Congress acts to change the ACA or the regulatory agencies modify the rules. (To date, the agencies have issued no proposed regulations to address this issue.) In addition, employers will still be subject to tax penalties if any of their employees receive a subsidy when purchasing healthcare

coverage on an exchange, regardless of whether the exchange is run by the state or the federal government. With the Court's ruling, employers also now have certainty about how their employees may be affected when considering ongoing plan sponsorship.

**ACTION** For additional information about these U.S. Supreme Court cases and their implications for retirement or health benefit plans, please contact your Milliman consultant.