

HICKS NOTES

NH **HICKS** Experience Counts
Legal and Pension Consultants
(800) 310-4975 | www.nhhicks.com

July 2015

By Tom Hicks, Attorney At Law

SUPREME COURT SAME-SEX MARRIAGE RULING WHAT PLAN SPONSORS NEED TO KNOW

On June 26, 2015, the Supreme Court struck down all state bans on same-sex marriages. While this may not affect those currently living in same-sex states, now all employers need to understand how it will effect the operation of their retirement plans.

For those employers who have not previously offered same-sex spouse benefits, these new rules require they treat all spouses equally for federal law purposes and if offering spouses special benefits under their employment practices. An employer must treat all spouses equally now, regardless of sex. While many see this as a positive with regards to equality, there are some pitfalls plan sponsors must anticipate.

Under federal law, a retirement plan that offers a “Joint and Survivor Annuity” as an optional form of payment, must now offer this to all spouses. In addition, the following retirement plan features may be affected in your plan: all plans requiring spousal consent for distributions, rollovers from a qualified plan, beneficiary designations, Qualified Domestic Relations Orders upon divorce, required minimum distribution, loans, hardships and state withholding on distributions.

There are also testing issues with regards to definitions of Highly Compensated Employees and Key Employees to be reviewed. Under federal law, a spouse of one of these designations is also considered under the designation for plan testing purposes. This can

dramatically affect Top Heavy, Average Benefit and ADP/ACP testing in 401(k) and other retirement plans. Family attribution rules also apply in other areas including prohibited transactions and controlled/affiliated service group determinations.

Every plan sponsor should determine if any same-sex spouses exist in their plan participants. Be sure to identify those individuals and make sure they are treated as married for all plan operations. If there are owners or highly compensated employees who fall under these rules, contact your plan administrator to see how this may affect the operation of the plan.

If you, as an employer are giving special benefits to spouses, such as travel or additional payments for insurance etc., you should check to make sure all spouses are treated equally. Failure to do so will leave you open to an EEOC discrimination claim from the same-sex spouse.

By being proactive now, most employers can eliminate the adverse effects of this ruling on their plan testing and operations.

As always, we are here for questions or to help. Contacts us [here](#).

“How to Sell Qualified Plans” Webinars

On August 18th, 19th and 20th, we will be providing webinars for anyone interested in selling and servicing qualified plans. For more information and to sign up, [click here](#).