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LEGAL ALERT

Same-Sex Spouse Is Entitled To Death Benefits Under ERISA-Qualified Plan

Following on the heels of the Supreme Court's decision in *U.S. v. Windsor*, a federal district court in Pennsylvania recently held that the same-sex spouse of a deceased employee is entitled to receive death benefits under the employer's ERISA-qualified plan. *Cozen O'Connor v. Tobits*.

Background

Sarah Ellyn Farley began working for the Cozen O'Connor law firm in 2004, and subsequently participated in the firm's profit-sharing plan. In 2006, Ms. Farley married Jean Tobits in Canada, which legally recognizes same-sex marriages. Ms. Farley passed away in 2010. Thereafter, Ms. Farley's parents and Ms. Tobits asserted competing claims to the death benefits set forth in the profit-sharing plan.

Pursuant to Cozen's plan, the surviving spouse of an employee is the automatic recipient of death benefits or, if there is no spouse or designated beneficiary, then the death benefits are to be paid to the surviving parents. The plan also provides that, to qualify as a "spouse," the individual must be married to the employee for at least one year prior to receiving benefits. Finally, the plan requires that its terms are to be construed and enforced according to ERISA and the Internal Revenue Code.

The Court's Decision

In examining the question of "exactly *who* can be a 'Spouse,'" U.S. district judge Darnell C. Jones II cited *U.S. v. Windsor*, in which the Supreme Court determined that Section 3 of the Defense of Marriage Act, which defined "marriage" as strictly heterosexual and "spouse" as referring only to a person of the opposite sex who is a husband or a wife, was unconstitutional. The court reasoned that, following the Supreme Court's decision in *Windsor*, "the term 'Spouse' is no longer unconstitutionally restricted to members of the opposite sex, but now rightfully includes those same-sex spouses in 'otherwise valid marriages.'"



Therefore, the court held that "Ms. Tobits is Ms. Farley's 'Spouse' pursuant to the terms of the Plan" and ordered that the death benefits be paid to Ms. Tobits.

This decision is binding precedent only in the Eastern District of Pennsylvania, but if the reasoning is adopted elsewhere, it could impact all employers who maintain ERISA-qualified plans. This would be so even if the employer is headquartered in a state which does not recognize same-sex marriages. In fact, state law in Pennsylvania explicitly voids same-sex marriages that are validly entered into in other states or foreign jurisdictions.

For more information, visit our website at www.laborlawyers.com or contact a member of the Fisher & Phillips Employee Benefits Practice Group.

This Legal Alert provides an overview of a specific federal district court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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