



The Supreme Court Ruling On The Defense Of Marriage Act (DOMA): What it means.

Implementation of federal rights, benefits, and protections will vary from state to state and on an individual basis. We encourage you to consult a legal or tax professional to determine how the application of these changes may affect your specific circumstances. This document is intended to provide an educational overview on some of the more general changes, and is not a complete guide. The official "After DOMA" Information Packet and Q&A, from the Human Rights Campaign, is available on our website.

The Supreme Court's historic ruling striking down Section 3 of the discriminatory Defense of Marriage Act (DOMA) is an enormous victory for married couples and their families, and affirms that they deserve equal treatment under the law. This victory demonstrates the importance of access to marriage, and gives married same-sex couples access to the tangible benefits of the federal safety net, allowing them to better protect one another and their children.

Knowing that this ruling will affect some of our Members, we have compiled below a Question and Answer guide to provide an overview of the major changes which may be applicable to same-sex couples. Following the Q&A, we cover some important points to which particular attention should be paid.

1. What does this mean for legally married same-sex couples living in a state that respects their marriage?

Same-sex couples who are legally married and live in a state that respects their marriages should be eligible virtually right away for the same protections and access to federal programs afforded to all other married couples. The federal government may take some additional time to change forms, train staff, and otherwise prepare for this change.

- a. There are more than 1,100 places in federal law where a protection or responsibility is based on marital status. A few key examples include access to Social Security survivors' benefits; the option to use family medical leave to care for a spouse; the opportunity to sponsor a foreign-born spouse for citizenship; and access to veterans' spousal benefits.

2. What about legally married same-sex couples living in a state that does NOT respect their marriage?

Legally married same-sex couples living in a state that does not respect their marriages may right away have access to some federal rights and benefits, but not to many others. Some federal agencies, including the IRS and Social Security, have looked to the laws of the state where a couple lives (place of residence/domicile). Others, including immigration agencies, look to where a couple got married (place of celebration). Other federal agencies and programs look to the state "with the most significant interest" in the marriage, and many have no explicit rule at all.

"Place Of Celebration" is the standard that best provides certainty, clarity, and stability for couples, their loved ones, employers, government agencies, and others, especially in a society where people regularly move for jobs, family, and many other purposes.



This standard simply acknowledges that a couple is married for federal purposes regardless of where the couple lives. It would not tell a state how it must treat married same-sex couples because the decision does not require states to recognize the marriage of same-sex couples and does not guarantee that married couples who live in states with marriage bans will receive all of the federal benefits based on marriage.

Depending on your individual circumstances, getting married may be financially or legally detrimental, especially if you are receiving certain government benefits. Couples should seek out individualized legal advice from a knowledgeable attorney before traveling to another place to marry.

3. Will legally married same-sex couples receive retroactive access to benefits they were previously denied?

As a general matter, if a person is not prohibited by a deadline in the law from seeking benefits, he or she may file an application and seek certain back benefits. But it is likely that the federal government will, in most instances, take a forward-looking approach, ensuring that married same-sex couples are respected as married from the day the Court's ruling takes effect.

4. Is all of DOMA now completely repealed?

No. Section 2 of DOMA, which says that states may legally discriminate against gay couples legally married in other states, still stands. The Respect for Marriage Act, a bill pending in Congress that enjoys bipartisan support and the backing of President Obama, would fully repeal all of DOMA. It would not tell states what to do, but would ensure that the federal government treats all marriages with respect.

5. Whom does the IRS count as married for federal purposes?

Past practice would seem to suggest that only couples who reside in states that license or recognize marriages of same-sex couples can expect to be treated as married by the IRS. However, there is no statute or regulation requiring this approach. This will likely be an evolving area of law and you should consult with a qualified tax expert about your circumstances.

6. I married in a state that recognizes same-sex marriages, and I still live in such a state. Am I eligible to be treated as a spouse for tax purposes?

Yes

7. I live in a state with a civil union or registered domestic partnership system. Am I eligible to be treated as a spouse for tax purposes?

Awaiting guidance from the IRS on this point.

8. I live in a state that does not recognize marriages of same-sex couples. Am I eligible to be treated as a spouse for tax purposes?

This is another point that remains unclear and is awaiting guidance from the IRS.

9. I'm married and my spouse resides (or resided at the time of death) in a state that recognizes marriages of same-sex couples. If I meet the other criteria, am I eligible for spousal-based benefits?

Yes. The Social Security law states that a person is considered a spouse if the courts of the state at the time of application would find that the couple was validly married.



Immigration

The following Q&A address some of the concerns we anticipate LGBT families with immigration issues will have following the striking down of DOMA. Immigration is a complicated area of law, with many factors to consider. Consult with a qualified immigration attorney about your specific situation.

10. Q- Now that DOMA has been held unconstitutional, if I marry my partner can I sponsor him/her for a green card?

In many cases, yes. Options for families will vary from case to case, based upon a number of factors.

11. My spouse and I married in a marriage equality state and live in a state that recognizes our marriage. Can I file for him/her?

Yes

12. My spouse and I married in a marriage equality state but live in a state that doesn't recognize our marriage. Can I still file for her/him?

Yes. As long as the marriage was validly entered into under the laws of the state or country of celebration, it should not matter where you currently reside.

Important Notes

- The Supreme Court's ruling applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.

Resources

American Civil Liberties Union (ACLU) aclu.org/lgbt

Center For American Progress americanprogress.org

Family Equality Council familyequality.org

Gay & Lesbian Advocates & Defenders (GLAD) glad.org

Human Rights Campaign (HRC) hrc.org

Immigration Equality immigrationequality.org

LAMBDA Legal lambdalegal.org

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