

HR Quarterly Update

Summer 2013

ACA Employer Mandate Delayed Until 2015

The play or pay provision of the Affordable Care Act (ACA) has been one of the most publicized provisions affecting employers, and many have been nervous about its 2014 effective date. So when President Obama announced a 1-year delay to this mandate in early July, many breathed a sigh of relief! People are now watching to see if the personal mandate receives a similar reprieve. Despite this recent change, there are many aspects of the ACA that have not been affected:

- Exchanges are still expected to begin open enrollment on October 1, 2013
- All pre-existing condition limitations must be removed and essential health benefits cannot have annual dollar limits
- Waiting periods cannot be more than 90 days from the date the employee becomes eligible
- The out-of-pocket maximum cannot exceed \$12,700 for family coverage and \$6,350 for individual coverage
- Dependent children up to age 26 must be covered even if the child has access to his/her own employer-provided coverage

NEW Notification Requirements

ACA requires new notices to be distributed to employees.

Under new [ACA guidelines](#), all employers subject to the Fair Labor Standards Act (which is almost everyone) must notify employees, both full-time and part-time, of their options on the Health Insurance Marketplace by 10/1 of this year. Notifications must be given to all new hires going forward. The Department of Labor has issued [sample templates](#) to help employers comply.

[COBRA election forms](#) language has also been amended to reference the new Exchanges.

What's on the Horizon...Does the Big Apple Give Any Indication?

[Mandated Paid Sick Leave](#): New York City has voted to require private sector employers (outside of the manufacturing industry) to provide paid sick time for employees.

[Unemployment Status Now Protected](#): New York City amends state law to add Unemployment Status to the list of protected classifications.

Supreme Court Narrows the Definition of 'Supervisor' in Recent Harassment Claim



In June the U.S. Supreme Court decided the *Vance v. Ball State University* case in a 5-4 decision. Maetta Vance, a black catering assistant, claimed that white co-workers and supervisors at Ball State University had racially harassed her. Under Title VII, an employer's liability for workplace harassment often depends on the harasser's status. If the harassing employee is the victim's co-worker, the employer is liable only if it was negligent in controlling the working conditions. If the harassing employee is a supervisor then the employer is strictly liable.

Vance had contended that one of the alleged harassers, Sandra Davis, was actually a supervisor, not a co-worker, because Davis directed her work and did not "clock in" like other hourly employees. The 7th Circuit, however, held that even harassment by a person whom the employer deemed a "supervisor" and who had the authority to direct and oversee the victim's daily work could not give rise to liability, because the harasser did not also have the power to take formal employment actions against her.

An employee is a "supervisor" of another employee for purposes of liability under Title VII of the 1964 Civil Rights Act only if he or she is empowered by the employer to take tangible employment actions against the other employee, the U.S. Supreme Court ruled. The high court rejected the position taken by several federal appellate courts and the Equal Employment Opportunity Commission that "supervisors" include those whom the employer vests with authority to direct and oversee the other employee's daily work.

"This decision reinforces the importance of employers having appropriate internal policies prohibiting discrimination and harassment and appropriate internal complaint procedures," Parker said.

DOMA Found Unconstitutional

The U.S. Supreme Court ruled in a 5-4 decision that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. The opinion, struck down Section 3's federal definition of "marriage" and "spouse," while leaving intact the law's Section 2, which lets states refuse to recognize same-sex marriages performed under the laws of other states.

DOMA disrupted states' historical role of defining and regulating marriage, the court determined. By defining "marriage" as a legal union only between one man and one woman as husband and wife and "spouse" as only a person of the opposite sex who is a husband or a wife, Congress displaced states' right to define these terms. The law also affects more than 1,000 federal laws in which marital or spousal status is addressed.

Regulation of domestic relations is "an area that has long been regarded as a virtually exclusive province of the states," the court noted. "Consistent with this allocation of authority, the federal government, through our history, has deferred to state-law policy decisions with respect to domestic relations."

Marriage laws vary from state to state in other respects, Kennedy observed. "DOMA, because of its reach and extent, departs from this history and tradition of reliance on state law to define marriage," the court stated. "DOMA undermines both the public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition," the court said.

Kennedy concluded by noting, "The principal purpose and the necessary effect of this law are to demean those persons who are in a lawful same-sex marriage. This requires the court to hold, as it now does, that DOMA is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution."

What does this mean for employers? If you have locations in states that recognize same-sex marriage, you will need to amend your federally mandated policies/benefits (COBRA, HIPAA, ERISA, FMLA, Social Security, etc...) to recognize the legitimacy of same-sex 'marriage'; extending benefits and coverage to all legal 'spouses'.



HR Quarterly Update is brought to you by Jodi Schafer, SPHR, Owner of Human Resource Management Service, LLC (HRMS). HRMS has been providing Human Resource solutions to small business employers since 1995. For a complete listing of services, please visit our website: www.HRMServices.biz, or contact me at 517-974-8033 or JodiSchafer@HRMServices.biz.