

Same-Sex Marriage Decision Leaves Questions for Employers

By [Donald Scarinci](#)

In *United States v. Windsor*, the U.S. Supreme Court definitively struck down the federal Defense of Marriage Act (DOMA), which defines “marriage” for all purposes under federal law as “only a legal union between one man and one woman as husband and wife.”

While DOMA was only one federal law, its implications are far-reaching. It controlled over 1,000 statutes and countless federal regulations pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans' benefits. Now both the public and private sector must determine how to implement the groundbreaking [same-sex marriage decision](#) in all of these arenas.

The federal Office of Personnel Management got the ball rolling for federal employees just days after the decision. It sent a [memo](#) to federal agencies providing preliminary guidance on the extension of benefits to married gay and lesbian federal employees, annuitants, and their families. It outlined that all legally married same-sex spouses and children of legal same-sex marriages are now eligible for benefits, including federal health insurance, life insurance, and dental and vision insurance. However, the memo also acknowledged, “There are numerous benefits that are affected by the Supreme Court’s decision, and it is impossible to answer today every question that you may have.”

For private [New Jersey employers](#), questions are also mounting about what changes will need to be made to comply with the new law of the land. Issues that must be addressed include health insurance coverage, Family Medical Leave Act leave, and spousal retirement/pension benefits. It has also yet to be determined whether same-sex spouses will be entitled to pursue retroactive payments for benefits that should have been provided absent DOMA.

The complexity of these issues is further compounded by the fact that only 12 states currently approve same-sex marriage. In many cases, same-sex couples marry in one state and reside in another. Employers may also have offices in states that allow same-sex marriage and those that do not; determining the appropriate policies and procedures is looking to be a complicated task.

Donald Scarinci is a managing partner at Lyndhurst, N.J. based law firm [Scarinci Hollenbeck](#). He is also the editor of the [Constitutional Law Reporter](#) and [Government and Law](#) blogs.

Read more at <http://www.politickernj.com/dscarinci/67134/same-sex-marriage-decision-leaves-questions-employers##ixzz2YmVYHjGQ>

or sign up for a free trial of State Street Wire at <http://www.politickernj.com/freetrial>