
United States Supreme Court Rules That Same Sex Couples Have a Right to Marry

By Ellen E. Hoepfner / Jun 26, 2015

On June 26, 2015, the United States Supreme Court issued a landmark ruling in *Obergefell v. Hodges*, in which it held that same sex couples have a Constitutional right to marry.

The case involved two issues: (1) Does the Fourteenth Amendment of the United States Constitution require a state to license a marriage between two people of the same sex? (2) Does the Fourteenth Amendment of the United States Constitution require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

Justice Kennedy, writing for the majority, answered both questions in the affirmative, stating:

"The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold-and it now does hold-that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character."

All four conservative justices wrote dissenting opinions.

As a result of the Court's ruling, same sex couples have the right to marry in every state, and it is expected that a large number of same sex couples will do so over the coming months.

What It Means For Employers

While the Court's ruling did not directly address employment, it will have significant practical effects on employers. Some of the likely impacts include:

FMLA Leave - employees will be able to take FMLA leave to care for a same sex spouse with a serious health condition. While the U.S. District Court for the Northern District of Texas issued a preliminary injunction of the DOL's final rule on this issue, the Supreme Court's decision likely renders the Texas decision moot.

Employee Welfare Benefit Plans - employers will likely need to cover same sex spouses under their insured employee welfare benefit plans. As was true following the Supreme Court's decision in *Windsor*, it is expected that the IRS will issue guidance on this topic quickly.

Workplace Discrimination - while the Court's ruling does not expand protection to employees against workplace discrimination on the basis of sexual orientation or gender identity, employers may expect substantial activity around this issue in both Congress and state legislatures.

If you have any questions about the *Obergefell* decision, you may contact Ellen E. Hoepfner at (313) 309-4256, ehoepfner@clarkhill.com, or another member of Clark Hill's Labor and Employment Practice Group.