

## What Do the DOMA, and Prop 8 Rulings Mean for Employees?

DOMA and Prop 8 have been hot topics over the last few years. Here is what their rather historic rulings mean.

### History of DOMA and Prop 8

The Defense of Marriage Act (DOMA) was enacted on September 21, 1996. It was a federal law that allowed states to refuse to recognize same-sex marriages performed under the laws of the other states and restricted federal marriage benefits. It codified the non-recognition of same-sex marriages for all federal purposes including: insurance benefits for government employees, Social Security survivors' benefits, immigration, and the filing of joint tax returns.

Because the federal Employee Retirement Income Security Act (ERISA) controls most private employer benefits, DOMA removed some tax breaks for employers and employees when it comes to health care, pension, and disability benefits to same-sex spouses on an equal footing with opposite-sex spouses. Under the federal law known as COBRA, workers at many companies can hang on to their job-based health insurance for themselves and their families for up to 18 months in most cases. But the law doesn't offer this guarantee to the same-sex spouses of former employees because of DOMA. Likewise, under federal law employees can add a new spouse to a health plan immediately, and if your spouse loses group health coverage, he or she can generally switch to your plan without waiting for the annual enrollment period. These protections don't apply to same-sex married couples because of DOMA. The Family and Medical Leave Act allows eligible employees unpaid time off to care for a seriously ill family member, but FMLA laws didn't apply to same-sex spouses again because of DOMA.

Proposition 8 was a 2008 California ballot proposition and a state constitutional amendment that declared, that "only marriage between a man and a woman is valid or recognized in California." The California Supreme Court upheld Proposition 8, but the Proposition came under new scrutiny in the Federal Courts, where it was ruled unconstitutional and enjoined from being enforced, before being appealed to the Ninth Circuit, where the lower court's decision was upheld before finally being appealed to the United States Supreme Court.

### Today's Rulings on DOMA and Prop 8

Today, the Supreme Court of the United States (SCOTUS, if you're so inclined) held Section 3 of DOMA to be unconstitutional. As such, there is no longer any basis for distinguishing under federal law between same-sex and opposite-sex spouses. So we can expect federal common law will provide that "spouse" for purposes of federal laws will be determined based upon the substantive law of the state in which the employee/spouse resides. As a result, for example, an ERISA plan would be administered in a manner that treats as spouses same-sex partners who reside in a jurisdiction where same-sex marriages are recognized, and will not treat them as spouses in jurisdictions where same-sex marriages are not recognized.

Today, the Supreme Court also held that supporters of Proposition 8 did not have the legal standing (meaning they didn't have a horse in the race) to appeal the Ninth Circuit's decision affirming the lower court's decision that Proposition 8 was unconstitutional and continuing the lower court's stay prohibiting enforcement of Proposition 8.

## **What the Rulings on DOMA and Prop 8 Mean**

The U.S. Supreme Court's ruling that supporters of Prop 8 do not have the legal standing to appeal the lower court's ruling, clears the way for same-sex marriages to resume in California. The Supreme Court's ruling in DOMA means that employers, in states where same-sex marriage is recognized, like California, no longer have to worry about distinguishing between "traditional" marriages and same-sex marriages. It also provides greater protection against sexual orientation discrimination.

Of course, if you are working in a place where you feel like you are being harassed, or discriminated against because of your sexual orientation, you should call an experienced Discrimination Attorney, before you need a San Diego Wrongful Termination Lawyer.

*John McCarthy is a San Diego Employment Lawyer, wrongful termination lawyer, and discrimination attorney dedicated to representing the victims of harassment, discrimination, retaliation, and wrongful termination, throughout California.*