



## Same-Sex Marriage and the Workplace

Alabama's recent news headlines have been dominated by the subject of same-sex marriage. There are very strong opinions on both sides of the issue, and Alabama has now joined the long list of states involved in litigation regarding the Constitution and its influence on the definition of "marriage". The U.S. Supreme Court will hear arguments in four same-sex marriage cases in April. Here are some items which Alabama employers should consider regarding legal compliance in this unsettled area:

- **FMLA:** The Department of Labor's proposed regulations seek to revise the FMLA's definition of "spouse" to treat all FMLA-eligible employees in legal marriages equally – that is, to allow eligible employees in valid same-sex marriages to take FMLA leave, regardless of where they live.
- **Federal Taxes and Benefits:** Couples who are legally married in jurisdictions that recognize same-sex marriages may be treated as "married" for federal tax purposes. Likewise, benefit plans must recognize same-sex marriages for purposes of administering federal statutory benefits such as HSA's, FSA's and COBRA, regardless of whether the plan recognizes same-sex marriages.
- **Diversity Initiatives:** Many employers continue to voluntarily implement and enhance their own diversity and inclusion programs. Same-sex marriage is an important area to consider when evaluating policies that promote the goal of diversity in the workplace.
- **Employee Handbooks:** Many personnel policies either expressly or implicitly address an employee's marital status. Discretionary benefits such as bereavement leave, relocation allowances, and employee discount plans should be evaluated regarding the applicable definition of "spouse" in any employer-sponsored plan.

If you have any questions, do not hesitate to contact any Burr & Forman [labor and employment attorney](#).