

HR Brief

Human Resources tips brought to you by
Brown & Brown Benefit Advisors

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U.S. Supreme Court Legalizes Same-sex Marriage

On June 26, 2015, the U.S. Supreme Court ruled in a 5-4 decision that the U.S. Constitution guarantees same-sex couples the right to marry.

The case, [Obergefell v. Hodges](#), challenged same-sex marriage bans in Ohio, Tennessee, Michigan and Kentucky. Although the ruling specifically involved those four states, it affects same-sex marriage laws in every state.

The ruling, effective immediately, means that same-sex couples have the right to be married in their own states and to have their marriages recognized as valid in every other state. All states must start (or continue) issuing marriage licenses to same-sex couples.

Due to the Supreme Court's ruling, employers will generally be required to treat employees in same-sex marriages the same

as employees in opposite-sex marriages for federal and state law purposes.

While many federal laws have already been interpreted to include both same-sex and opposite-sex marriages, this ruling will expand those legal rights and protections to additional couples.

You should review your policies and procedures and update them if necessary in order to align with the Supreme Court's ruling. For example, many states have employee leave laws that entitle an employee to take time off from work to care for his or her spouse. Employers should provide the same leave protections to same-sex spouses as they do to opposite-sex spouses in these situations, even if not previously required under the law.

In addition, same-sex spouses will be subject to the same state tax rules as opposite-sex spouses. State insurance laws may require employers with insured health plans to offer equal health plan coverage to opposite- and same-sex spouses.

Even if your health plan is not subject to state insurance laws, you may still be at risk for discrimination lawsuits if coverage is only offered to opposite-sex spouses.

You should also keep in mind applicable nondiscrimination laws when providing any rights or benefits to employees. Many states have added sexual orientation as a protected class in fair employment and nondiscrimination laws.

DID YOU KNOW?

The DOL is requesting information on the use of technology, including portable electronic devices, by employees who are away from the workplace and who work outside of scheduled work hours.

The use of portable devices in the workplace has made it harder for employers to ensure they are paying nonexempt employees for all the time they have worked. While the FLSA does not require employers to compensate for "de minimus" work (work of five minutes or less), the growing use of email outside of work can make it more difficult to determine "de minimus" work. Due to the increasing number of lawsuits by nonexempt employees for uncompensated off-the-clock work, you may want to consider implementing policies to minimize your risk.

DOL Issues Proposed Rule to Expand Overtime Protections

On June 30, 2015, the Department of Labor (DOL) issued its [proposed rule](#) to modify the exemptions provided under the Fair Labor Standards Act (FLSA) for executive, administrative, professional, outside sales and computer employees ("white collar exemptions").

The proposed rule seeks to increase the salary requirements in order for employees to be considered exempt from the minimum wage and overtime requirements of the FLSA. The current minimum salary requirement is \$455 per week (\$23,660 per year). The proposed rule seeks to raise this to \$921 per week (\$47,892 per year). In addition, the proposed rule would automatically update the salary requirements every year based on fixed percentiles of wages paid and inflation. The projected increase is \$50,440 in 2016.

The proposed rule does not modify the standard duties test for white collar exemptions, but it seeks comments on whether the test is working as intended.

You are encouraged to review the proposed rule. If implemented, you will be required to reexamine the exemption status of your employees, update and adapt overtime policies, notify employees of policy changes and adjust payroll systems.