



Breaking Law Bulletin

Impact of *Obergefell v. Hodges* on Texas Employers

On June 26, 2015, in a 5-4 decision, the United States Supreme Court held that the right to marry is a “fundamental right.”

This means that all 50 states must issue licenses for same-sex marriages and must recognize same-sex marriages performed in other states.

Impact on Employers

Spousal rights under the Family and Medical Leave Act (FMLA) apply to individuals in same-sex marriages in Texas.

Under the *Obergefell* ruling, the definition of “spouse” for purposes of the FMLA includes the other person in a same sex marriage.

Texas employers should immediately implement the new FMLA definition of spouse and review FMLA notices and provisions in personnel policies to include the new definition of spouse.

Under the new regulation, if an employer is subject to the FMLA, an employee in a same-sex marriage is eligible for twelve (12) weeks of unpaid, job-protected leave:

- to care for his or her spouse who has a serious health condition,
- for the birth, adoption or placement for adoption or foster care of a child,
- to care for a covered service member with a serious illness or injury, and due to a qualifying exigency if a spouse, parent, son or daughter is on covered active duty, on call for covered active duty, or has been notified of an impending call or order to covered active duty.

The 2013 Supreme Court decision in *United States v. Windsor* extended equal protection to couples in same-sex marriages under a number of federal laws, including health and retirement plan laws, federal income tax laws, COBRA and HIPAA.

The *Obergefell* decision does not directly involve Title VII of the Civil Rights Act of 1964. However, the EEOC maintains that discrimination on the basis of sexual orientation or gender identity is gender discrimination that is prohibited under Title VII.

June 29, 2015

How Friday's United States Supreme Court Decision Immediately Impacts Employers in Texas



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Reaction in Texas

On June 26, 2015, Judge Garcia, a federal Judge from the Western District of Texas, issued an order enjoining the Texas Governor from enforcing any laws or regulations prohibiting a person from marrying another person of the same sex or recognizing same sex marriage.

On June 28, 2015, Texas Attorney General Ken Paxton issued an opinion that County clerks and their employees retain religious freedoms that may allow accommodation of their religious objections to issuing same-sex marriage licenses. In issuing this opinion, Attorney General Paxton stated that:

- the strength of any religious beliefs claim depends on the particular facts of each case;
- a county clerk may delegate duties to deputy clerks, and deputy clerks have the authority but not the mandatory duty to perform the acts of the county clerk;
- a county clerk opting to issue no licenses at all may find himself or herself in violation of the Texas Family Code and subjected to a \$500 fine.

On June 29, 2015, Senator Rodney Ellis requested Department of Justice oversight to monitor the implementation of *Obergefell* in Texas.

As of June 29, 2015, the following Texas counties are refusing to issue marriage licenses based on Attorney General's opinion letter:

- San Saba

As of June 29, 2015, the following Texas counties are currently issuing marriage licenses:

- Bastrop, Bell, Bexar, Blanco, Brazos, Burnet, Collin, Comal, Dallas, Denton, Ector, El Paso, Gregg, Harris, Hays, Hidalgo, Hunt, Jefferson, McLennan, Midland, Milam, Rockwall, Tarrant, Travis, Trinity, Tyler, Williamson.

As of June 29, 2015, some of the remaining Texas counties are awaiting the appropriate forms and/or legal guidance from their county attorney or district attorney.



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