TRUSTEED PLANS SERVICE CORPORATION

Administrators for Employee Benefit Plans since 1963

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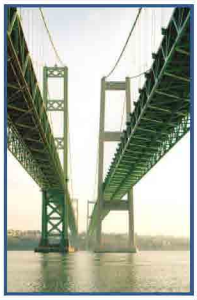

News You Can Use: Autumn 2013

## Treasury and IRS Announce Same-Sex Marriages Will Be Recognized for Federal Tax Purposes

On August 29, the IRS and Treasury issued their first wave of guidance regarding the impact of *United States v. Windsor*—in which the Supreme Court declared section 3 of the Defense of Marriage Act ("DOMA") unconstitutional—under the Internal Revenue Code.

The Ruling states that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. "Spouse" is defined broadly in the Ruling to include all same-sex marriages that were performed in a domestic or foreign jurisdiction having the legal authority to sanction marriages—the "place of celebration" principle—without regard to the state law where the spouse is domiciled. *(Thirteen states and the District of Columbia currently recognize same-sex marriages, as do roughly the same number of foreign countries, including Canada.)*

Says the official IRS announcement: "[S]ame-sex couples will be treated as married for all federal tax purposes, including income and gift and estate taxes. The Ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit or child tax credit. **Any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory or a foreign country will be covered by the ruling.** However, the ruling does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law."

While the IRS has now provided significant guidance in this area, the Department of Labor and other federal agencies that have responsibility over numerous requirements and laws applicable to employee benefit plans, including ERISA, have yet to speak on this issue in the *context* of employee benefit plans. The Director of the Department of Labor's Office of Health Plan Standards and Compliance Assistance has stated that these agencies are working on issuing additional guidance...

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## Drop Spouses or Add a Surcharge: Is Either the Right Move?

Even with comparatively low premium increases the last few years, Employers are struggling to shoulder increasing health costs. As a result, they're turning to more drastic measures to cope. Case in point: United Parcel Service announced in late August that it plans to drop health coverage for more than 15,000 of its employees' spouses for the 2014 plan year.

Notes SPBA (Society of Professional Benefit Administrators), dropping dependent coverage reemerges every 10 years or so as the "new" great idea for cutting costs. With the announcement from UPS, the discussion is now starting again. The employer's reason is usually cost cutting, but also that many spouses have their own coverage. The new wrinkle: Exchanges will be available under ACA.

For many employers, the idea of completely dropping spouses is still a bit too extreme. And there are other effective cost-containment measures regarding spouses.

While it's certainly not a new tactic, the spousal surcharge has become much more common in recent years, says HRBenefits Alert.com. In fact, 20% of firms report currently imposing monthly surcharges of around $100 on spouses who don't take advantage of their own employers' health plan when it's offered, according to the *Annual Towers Watson/ National Business Group on Health Employer Survey on Purchasing Value in Health Care*. Another 13% say they'll take such a step in 2014.

What's the problem? ***How to attract or retain employees in key positions in marketing, IT, financial, operations and HR!!*** These executives are (statistically) more often married, and may even have children under 26 to cover. Also, with many jobs moving to no-benefits/29 hours because of ACA, the chance of a working spouse or adult child not having coverage will jump dramatically.

Plan Sponsors may want to ask department heads how they will feel if they can not attract or keep that kind of talent—before making the decision to drop or surcharge ***any*** dependents' coverage.