

FYI[®] Alert

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DOL on board with IRS approach to same-sex marriage

In light of the Supreme Court's *Windsor* decision on DOMA, the DOL's Employee Benefits Security Administration (EBSA) has issued guidance for employee benefit plans, plan sponsors, fiduciaries, and participants and beneficiaries on the meaning of "spouse" and "marriage." [Technical Release No. 2013-04](#) signals EBSA's intent to follow the IRS' lead, defining these terms by the law of the state where the individuals marry ("state of celebration"), rather than where they currently live. (See our [August 30, 2013 For Your Information.](#)) The technical release relates to the laws and regulations within EBSA's jurisdiction, such as Title I of ERISA and the Internal Revenue Code, as well as COBRA and HIPAA, among others. Describing its decision to use the state of celebration approach, the DOL emphasizes the need to alleviate administrative burdens and promote uniformity for all stakeholders. Employers with plan participants and beneficiaries located in more than one state, in particular, could have faced even more complex administrative challenges. The technical release does not state an effective date or mention any retroactivity requirement or relief. However, EBSA indicates its intent to issue future guidance on specific ERISA provisions and regulations.

Buck Comment. The guidance does not appear to impact DOL regulations governing the federal Family and Medical Leave Act (FMLA). Whether the DOL's Wage and Hour Division, which enforces the FMLA, acts to change existing FMLA regulations and adopt a "state of celebration" rule remains to be seen. (See our [August 13, 2013 For Your Information.](#))

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