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United States v. Windsor and Its Effect on North Carolina Local Government Employee Benefits

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On June 26, 2013, the United States Supreme Court held in *United States v. Windsor*[1] that Section 3 of the federal Defense of Marriage Act (DOMA) is unconstitutional. As a result, for all federal laws the terms "spouse" and "marriage" now include, in addition to opposite-sex spouses and marriages between persons of opposite sexes, same-sex spouses and marriages between persons of the same sex. The Supreme Court's decision has no effect, however, on state laws.

There are six things North Carolina local government employers need to know about how the *Windsor* decision affects employee benefits:

1. The decision does not change the law governing spousal coverage under employer-sponsored health insurance plans (nor does the Affordable Care Act, for that matter). Thus, if a local government employer offers health insurance coverage only to opposite-sex spouses, it does not have to make any changes now.
2. The *Windsor* decision does affect flexible spending plans, premium conversion plans, health savings accounts, and health reimbursement accounts.[2] Starting now, North Carolina employers must allow their employees to include same-sex spouses in these arrangements.
3. The *Windsor* decision affects those aspects of the Local Governmental Employees' Retirement System (LGERS) and the North Carolina 401(k) Plan that are governed by the federal tax code. The State Treasurer's Office will have to make any changes that are required as a result of the *Windsor* decision. Local governments need not do anything at this time.
4. For the moment, leave from work to care for a serious health condition of a spouse under the federal Family and Medical Leave Act remains available only to employees with spouses of the opposite sex.
5. The *Windsor* decision applies only to same-sex marriages, not to civil unions or domestic partnerships.
6. North Carolina local government employers remain free to offer employee benefits to the same-sex spouses or domestic partners of their employees, if they so choose.

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1. ___ U.S. ___, 133 S. Ct. 2675 (2013).
2. These plans and accounts are discussed in greater detail on pages 4–7, below.

Background: *United States v. Windsor* and the Defense of Marriage Act

The federal Defense of Marriage Act (DOMA)[3] had two different sections that affected same-sex couples' access to employee benefits. Section 2 of DOMA allows states to disregard as invalid marriages legally performed in other states if they are between two persons of the same gender.[4] This is the section that authorizes both Amendment One to the North Carolina Constitution and Section 51-1.2 of the North Carolina General Statutes (hereinafter G.S.), both of which say that marriages between persons of the same gender that have been performed in other states are not valid in North Carolina. Amendment One and G.S. 51-1.2 allow public employers to exclude the same-sex spouses of their employees from health insurance benefits open to the spouses of heterosexual couples.

Section 3 of DOMA, the section at issue in the *Windsor* case, amended the federal Dictionary Act[5] (which defines those terms which are to have a consistent meaning across the U.S. Code) by adding the following definitions of "marriage" and "spouse":

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.[6]

As a result of this definition, any federal benefit or program that defined a beneficiary by reference to an employee's "spouse" was not legally required to be extended to a same-sex spouse. In the realm of employee benefits, the only federal laws that this limitation affected were the provisions on leave under the Family and Medical Leave Act[7] and the Internal Revenue Code's sections on tax-favored treatment of employer-provided health benefits for spouses, which allow a married employee to use pre-tax income to pay for his or her spouse's medical expenses under either a flexible spending plan or a health reimbursement account or health savings account.[8]

In *United States v. Windsor*,[9] Edith Windsor challenged the constitutionality of Section 3 of DOMA. She had married her same-sex partner in Canada, and their marriage was recognized by the State of New York, where they resided. When Windsor's wife passed away, she left her entire estate to Windsor. Had Windsor been married to a man, she would have been entitled to take advantage of the marital exemption from the federal estate tax and would not have had to pay $363,053 in taxes.[10] Because DOMA excluded same-sex spouses from the federal definition of "spouse," however, the Internal Revenue Service (IRS) denied her application for a refund of

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3. Pub. L. No. 104-199, 110 Stat. 2419 (Sept. 21, 1996).

4. *See* 28 U.S.C. § 1738C (as amended by Pub. L. No. 104-119, 110 Stat. 2419, sec. 2(a)).

5. *See* 1 U.S.C. Ch. 1

6. *See* Pub. L. No. 104-199, 110 Stat. 2419, sec. 3(a) (amending 1 U.S.C. § 7).

7. 29 U.S.C. §§ 2601 *et seq*.

8. Subchapter B, Part II of Title 26 of the U.S. Code (the Internal Revenue Code) covers "items specifically excluded from gross income," such as medical expenses under flexible spending plans, health reimbursement arrangements, and health savings accounts.

9. ___ U.S. ___, 133 S. Ct. 2675 (2013).

10. *See* 26 U.S.C. § 2056(a) ("the value of the taxable estate shall . . . be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse").

the estate taxes she had paid. Windsor sued, arguing that Section 3 of DOMA violated the equal protection guarantee implied by the Fifth Amendment to the U.S. Constitution.

The U.S. Supreme Court agreed. In his majority opinion, Justice Kennedy observed that "[b]y history and tradition the definition and regulation of marriage . . . has been treated as being within the authority and realm of the separate States," although Congress retains the ability, through its passage of individual statutes within its constitutional authority (particularly those related to federal income taxation), to affect marital rights and privileges.[11] DOMA, Justice Kennedy explained, was different in that it departed from the federal government's usual tradition of recognizing and accepting state definitions of marriage. "The avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States,"[12] Kennedy found. "This raises a most serious question under the Constitution's Fifth Amendment," he stated.[13] Justice Kennedy continued:

> DOMA's operation in practice confirms this purpose. When New York adopted a law to permit same-sex marriage, it sought to eliminate inequality; but DOMA frustrates that objective through a system-wide enactment with no identified connection to any particular area of federal law. DOMA writes inequality into the entire United States Code. The particular case at hand concerns the estate tax, but DOMA is more than a simple determination of what should or should not be allowed as an estate tax refund. Among the over 1,000 statutes and numerous federal regulations that DOMA controls are laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans' benefits.
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> . . . DOMA contrives to deprive some couples married under the laws of their State, but not other couples, of both rights and responsibilities. By creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect.[14]

Section 3 of DOMA, the Court held, is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment.[15]

One issue the *Windsor* decision did not address was DOMA's recognition of a state's right to define marriage as between a man and a woman and to refuse to recognize same-sex marriages performed in another state. Thus, North Carolina's ban on same-sex marriage remains in place and, for purposes of North Carolina state law, same-sex marriages, wherever performed, have no validity.[16] What *Windsor* did change, however, is the way North Carolina must treat same-sex spouses lawfully married in another state when applying federal law.

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11. ___ U.S. at ___, 133 S. Ct. at 2689–90.
12. ___ U.S. at ___, 133 S. Ct. at 2693.
13. ___ U.S. at ___, 133 S. Ct. at 2694.
14. ___ U.S. at ___, 133 S. Ct. at 2694.
15. ___ U.S. at ___, 133 S. Ct. at 2696.
16. Amendment One to the North Carolina Constitution, approved by the state's voters in May 2012, provides that marriage between a man and a woman is the only "domestic" union that can receive legal

Six Things North Carolina Local Government Employers Need to Know About the *Windsor* Decision

1. The *Windsor* Decision Does Not Change the Law Governing Spousal Coverage under Employer-Sponsored Health Insurance Plans

No state or federal law requires employers to offer health insurance coverage for their employees' spouses. Traditionally, though, most local governments do—by choice—offer such coverage. In doing so these employers typically pay the entire cost of the health insurance premiums for active employees ("noncontributory"), but they require the employees to pay some or all of the cost of insuring their families ("contributory"). Nothing other than market forces and the desire to retain good employees constrains an employer's decision about whether to offer spouse and family coverage and on what terms.

Spousal coverage is not now a requirement under the Affordable Care Act (ACA), nor will it be as that law's various provisions are implemented over the next few years. The IRS makes this clear in its final rules on employer shared responsibility, or as it is sometimes known, the employer mandate. The regulation set forth at 26 C.F.R. § 54.4980H-1(a)(12) defines the term "dependent" for the purposes of the ACA's shared responsibility requirement as " a child . . . of an employee who has not attained age 26. . . . The term dependent does not include the spouse of an employee."

Thus, North Carolina public employers who offer health insurance coverage on a contributory or a noncontributory basis to the spouses of their employees do not have to offer coverage to same-sex spouses, even after the *Windsor* decision.

2. North Carolina Employers Must Now Allow Their Employees to Include Same-Sex Spouses in Flexible Spending Plans, Premium Conversion Plans, Health Savings Accounts, and Health Reimbursement Arrangements

The federal tax code contains a number of provisions that allow employers to enhance employee health benefits. For example, many local government employers offer their employees the opportunity to participate in healthcare flexible spending accounts (FSAs), into which employees may contribute a percentage of their salary pre-tax for use in paying unreimbursed medical expenses for that calendar year or for paying the cost of child care necessary while the employee is at work. The same section of the tax code authorizes the creation of what are known as "premium conversion plans," which allow employees to pay health, dental, and contributory life insurance premiums with pre-tax dollars. Some employers have also incorporated health reimbursement arrangements (HRAs) and health savings accounts (HSAs) into their health benefit packages.[17]

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recognition in this state. Amendment One did not fundamentally change the legal landscape for same-sex couples as it existed in May 2012, as the General Assembly did not authorize same-sex marriages or recognize those that were performed in other states. Under North Carolina law, only a man and a woman may marry one another. Section 51-1 of the North Carolina General Statutes (hereinafter G.S.) provides that "[a] valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry . . . ." G.S. 51-1.2 says that "[m]arriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina."

17. For a more detailed discussion of flexible spending accounts and premium conversion plans, see Diane M. Juffras, *Employee Benefits Law for North Carolina Local Government Employers* (UNC School of Government, 2009), 137–38. For a detailed discussion of HRAs and HSAs, see pages 66–75 of this same publication.

For North Carolina local government employers that offer health insurance premium conversion plans, flexible spending, health reimbursement arrangements, or health savings accounts, the treatment of same-sex spouses for these purposes will change, even though employers are not required to offer any health insurance coverage.

The IRS has announced that it will define the terms "spouse," "husband," "wife," and "marriage" by reference to the state of celebration—the state where the employee entered into a legally-recognized marriage—rather than by the state of domicile, that is, the state where the employee lives, for determining whether or not the spouse in a same-sex marriage qualifies for treatment as a spouse for federal tax purposes.[18] In other words, if a same-sex couple was married in a state that recognizes same-sex marriage, they will be afforded the employment-related tax benefits that opposite-sex married couples enjoy even if they reside in a state that, like North Carolina, does not recognize same-sex marriages performed in other jurisdictions. As the IRS explained, "Although states have different rules of marriage recognition, uniform nationwide rules are essential for efficient and fair tax administration. A rule under which a couple's marital status could change simply by moving from one state to another state would be prohibitively difficult and costly for the [IRS] to administer, and for many taxpayers to apply."[19]

What does this mean more specifically? The subsections below will explain.

Health Insurance Premiums

When an employer covers the cost of an employee's health insurance premium, as many North Carolina local governments do, the cost of that premium is excluded from taxable income when reporting the employee's earnings to the IRS. These contributions are subject to neither withholding nor payroll taxes (social security, Medicare, and unemployment taxes).[20] Employer-provided health insurance is thus a tax-free form of compensation. Similarly, when an employer pays for the cost of the premium for an employee's spouse or dependents, whether in whole or in part, the amount contributed by the employer is excluded from taxable income and is not subject to payroll taxes. When employers do not cover the entire cost of an employee's health insurance premium or where the participation of family members is on a contributory basis, use of a so-called "premium conversion plan" allows employees to exclude from income and payroll taxes the wages used to pay for their own or for their family members' insurance premiums.[21] Because DOMA restricted the meaning of the word "spouse" to the husband or wife in an opposite-sex marriage, the payments made toward the cost of the health insurance premium of a same-sex spouse could not be excluded from taxable income prior to the *Windsor* decision. Going forward, if a North Carolina employer offers coverage to the same-sex spouses of its employees, it must accord the same tax-advantaged treatment to the premiums employees pay for coverage of their same-sex spouses that they have validly married under the law of another state as it does the opposite-sex husbands and wives of its employees.

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18. *See* Internal Revenue Serv., *Revenue Ruling 2013-17* (Sept. 16, 2013), www.irs.gov/pub/irs-drop/rr-13-17.pdf (hereinafter *Revenue Ruling*), 9.

19. *Revenue Ruling*, at 3.

20. *See* 26 U.S.C. §§ 106(a), 3121(a)(2), and 3306(b)(2). Treasury Regulation § 1.106-1 provides that the exclusion from gross income extends to contributions that the employer makes to a health plan on behalf of the employee's spouse or dependents, as defined in 26 U.S.C. § 152. *See* www.gpo.gov/fdsys/pkg/CFR-2012-title26-vol2/pdf/CFR-2012-title26-vol2-sec1-106-1.pdf.

21. *See* 26 U.S.C. § 125.

Flexible Spending Accounts, Health Reimbursement Arrangements, and Health Savings Accounts

Under DOMA, the medical expenses of same-sex spouses were similarly excluded from tax-favored treatment under flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), and health savings accounts (HSAs). As noted above, an FSA allows an employee to set aside wages on a pre-tax basis to pay for the unreimbursed medical expenses of "the taxpayer, his spouse and his dependents" as that term is defined in Internal Revenue Code Section 152.[22] An HRA is a form of FSA into which only an employer may contribute. The money in an HRA may be withdrawn by the employee to reimburse himself or herself for the employee's own medical expenses or for a spouse or dependent's medical expenses. The Internal Revenue Code excludes the amount of the employer's contribution from the taxable income of the employee.[23] HSAs are a third and more restrictive vehicle through which employees may pay for unreimbursed medical expenses for themselves and their family members with pre-tax income. Both employer and employee may contribute to an HSA, and contributions may be withdrawn to reimburse the employee for certain medical expenses for "such individual, the spouse of such individual, and any dependent."[24] So long as the money in an HSA is spent on allowable medical expenses for the employee, legal spouse, or dependent, both the employer and employee contribution are excluded from tax.

Going forward, North Carolina employers, like all employers nationwide, must reimburse an employee out of an FSA, HRA, or HSA for the medical expenses of a same-sex spouse if the couple was validly married in another state. Complying with this new standard requires North Carolina public employers to take some very concrete steps:

- First, they should review FSA medical expense and dependent care reimbursement plan documents to ensure that the documents reflect that coverage can now be extended to same-sex spouses.
- Next, where employers have extended their health insurance benefits to same-sex partners, they must make any necessary modifications to their payroll systems to allow pre-tax payment of premiums for same-sex spouses of marriages entered into in states where it is valid and to stop any tax withholdings on imputed income for healthcare coverage to same-sex spouses. (Note, though, that the value of coverage provided to same-sex spouses *will* be taxable under state law.)
- Finally, as allowable under the terms of an employer's cafeteria plan, the employer should inform employees that they have the right to make election changes to their FSAs, HRAs, and HSAs, as a change in family status may have occurred as the result of the federal recognition of same-sex spouses.

These changes must be made even if the individual local government employer does not offer health insurance coverage to an employee's same-sex spouse whom the employee has married in another state. In January 2014, the IRS issued a fairly detailed guidance on the application of the *Windsor* decision to flexible spending elections and to HRA and HSA accounts.[25] Employees

22. *See* 26 U.S.C. § 105(b).

23. *See* Internal Revenue Serv., "Notice 2002-45," in *Internal Revenue Bulletin No. 2002-28* (July 15, 2002), www.irs.gov/pub/irs-irbs/irb02-28.pdf.

24. 26 U.S.C. § 223(d)(2).

25. *See* Internal Revenue Serv., *Notice 2014-1, Sections 125 and 223 – Cafeteria Plans, Flexible Spending Arrangements, and Health Savings Accounts – Elections and Reimbursements for Same-Sex Spouses Following the Windsor Supreme Court Decision*, www.irs.gov/pub/irs-drop/n-14-01.pdf.

who are affected by the change in the federal tax law's definition of "spouse" will need to consult with their individual tax advisors to see whether they are entitled to any tax adjustments.

3. *Windsor* Affects Those Aspects of LGERS and the North Carolina 401(k) Plan That Are Governed by the Federal Tax Code

Both LGERS and the North Carolina 401(k) Plan are what are known as *tax-qualified retirement plans*. As such, they too are affected by the change in the federal definitions of "spouse" and "marriage." Because LGERS and the 401(k) Plan allow employer and employee contributions to be made on a pre-tax basis in accordance with the applicable IRS rules, same-sex spouses must be recognized under the retirement system and the 401(k) Plan even though they are sponsored by the State of North Carolina, which does not recognize same-sex marriage. Happily for local government human resources professionals, it is the North Carolina Treasurer's Office, as administrator of the state's public retirement systems, that will have to make these changes.

Tax law governing retirement plans is complex and is beyond the expertise of the author. A recent presentation paper prepared for an American Law Institute program on retirement plans of tax-exempt and governmental employers, however, identifies the following as some of the IRS provisions applicable to public as well as private retirement plans that will be affected by the *Windsor* decision:

- 26 U.S.C. § 409(a)(9) (governing minimum distribution rules);
- 26 U.S.C. § 401(a)(31) (governing the rollover of distributions);
- 26 U.S.C. § 402(f)(1) (providing for notifications to spouses about rollover distributions);
- 26 U.S.C. § 415(b) (imposing limitations of benefits in single life annuities and providing an exception for qualified joint and survivor annuities); and
- 26 U.S.C. § 414(b) (governing qualified domestic relations orders, which direct plans how to divide up retirement benefits upon divorce).[26]

With respect to each of these provisions, before the *Windsor* decision, same-sex spouses could be named only as designated beneficiaries. Now they must be treated the same as opposite-sex spouses for purposes of these rules.

Neither city and county managers, human resources professionals, nor governing boards must take any steps to comply with the change in the way the federal tax code will now treat retirement plans and same-sex spouses. As noted above, that responsibility rests with the North Carolina State Treasurer's Office as the administrator of LGERS and with the company that serves as administrator of the North Carolina 401(k) Plan at any given time. Indeed, with the exception of qualified domestic relations orders (QDROs), most of the issues likely to arise under the Internal Revenue Code will not do so until LGERS participants are, in fact, retired. As for QDROs, most will be sent directly to the plan administrators. Human resources departments should, however, be aware that the *Windsor* decision means that generally, the federal tax treatment of retirement benefits will now be the same for same-sex spouses and opposite-sex spouses, in the event they get a question on this topic from an employee.

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26. *See* Terry A.M. Mumford, "The Impact of *United States v. Windsor* on Governmental Retirement Plans," presented at *Retirement, Deferred Compensation, and Welfare Plans of Tax-Exempt and Governmental Employer*, a Continuing Legal Education session offered by the American Law Institute, Sept. 26–27, 2013, Washington, D.C., http://files.ali-cle.org/thumbs/datastorage/skoobesruoc/pdf/CV006_chapter_18_thumb.pdf.

4. Leave to Care for the Serious Health Condition of a Spouse under the Federal Family and Medical Leave Act Remains Available Only to Employees with Spouses of the Opposite Sex

Among the federal laws that in some way impact the marriage relationship, the Family and Medical Leave Act (FMLA) may well be the one with which employers grapple most frequently. The FMLA requires public employers with fifty or more employees to allow employees to take up to twelve weeks of job-protected leave to care for a family member with a serious health condition or to deal with a qualifying exigency arising out of the fact that a family member is on active duty in support of a contingency operation. Eligible family members include a spouse, son, daughter, or parent of the employee.[27] The military caregiver leave provisions of the FMLA require employers to allow employees to take up to twenty-six weeks of job-protected leave to care for a servicemember spouse, son, daughter, parent, or next of kin who has been injured in the line of duty.[28] Because DOMA defined "spouse" as the husband or wife in a legal union of opposite-sex partners, same-sex partners of marriages performed in states where they are legal had no legal right to the benefits and protections of the FMLA.

North Carolina public employers will likely be surprised to learn that even now, after the U.S. Supreme Court's decision in the *Windsor* case, they may not extend FMLA benefits to employees who have same-sex spouses with a serious health condition or who are in the military and are deployed on short notice or are injured in the line of duty. The reason for this continued denial of benefits is that the U.S. Department of Labor's FMLA regulations define the term "spouse" by reference to the state of domicile, that is, the state where the employee lives, rather than by the state of celebration, or the state where the employee entered into a legally recognized marriage. The FMLA itself defines the term "spouse" as "a husband or wife, as the case may be."[29] The regulations clarify that "spouse" means "a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized."[30] There is no evidence that this definition was framed in this way to exclude the partners to a same-sex marriage from enjoying the benefits of the FMLA. Rather, as the definition itself suggests, it was drafted to take into account the fact that some states recognize common law marriages while others do not and that different states have different minimum ages that a person must reach before he or she may legally marry.

Thus, employees of a city or county or of state government in Maryland or Washington state, for example, are entitled to FMLA leave for the serious health conditions of their same-sex spouses because same-sex marriage is legal in those states. Employees of a North Carolina city or county or of North Carolina state government are not entitled to those same benefits because North Carolina does not recognize the validity of same-sex marriages performed elsewhere.

Some employers may nevertheless, on their own, wish to offer such benefits to employees with same-sex spouses or domestic partners. They are free to do so. The federal DOMA only restricts the universe of employees who have a legal right to take FMLA leave; it does not prohibit employers from offering similar leave to employees who wish to care for loved ones who do not fit the statutory definition of "spouse." Such voluntarily offered similar leave, however, cannot be counted against an employee's statutory right to twelve weeks of FMLA leave or twenty-four weeks of combined FMLA and military family leave.

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27. *See* 29 U.S.C. §§ 2612(a)(1)(C) and (E).
28. *See, e.g.,* 29 U.S.C. § 2612(a)(3).
29. 29 U.S.C. § 2611(13).
30. 29 C.F.R. § 825.102.

The FMLA regulations have been developed and are administered by the Wage and Hour Division of the federal Department of Labor. Interestingly, the Employee Benefits Security Administration (EBSA), the division of the Department of Labor responsible for enforcing the Employee Retirement Income Security Act (ERISA), a law that governs private sector (but not public) retirement plans, has adopted the so-called place of celebration standard for determining whether a same-sex marriage is entitled to the protections of that law. The EBSA advised that in those sections of ERISA and the Internal Revenue Code over which the Secretary of Labor has authority, "the term 'spouse' will be read to refer to any individuals who are lawfully married under any state law, including individuals married to a person of the same sex who were legally married in a state that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages. Similarly, the term 'marriage' will be read to include a same-sex marriage that is legally recognized as a marriage under any state law."[31]

Will the Wage and Hour Division amend its FMLA regulations to define the term "spouse" as a husband or wife as defined by the law of the state where the marriage was entered into? If it does, then North Carolina public employers will have to grant FMLA leave to any employee who entered into a same-sex marriage in a state where it was lawful to do so. The fact that the EBSA has defined "spouse" by reference to the state where the marriage was performed suggests that such a change is a real possibility. Such a definition would be consistent with the *Windsor* decision, as the EBSA points out, and would provide a uniform rule for the recognition of marriages for the purposes of the FMLA. On the other hand, the Wage and Hour Division has issued a new fact sheet that features a highlighted box containing a new definition of "spouse." This definition does not have the force of law but it may be a clue to the Wage and Hour Division's thinking. The definition on the fact sheet says, "Spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including 'common law' marriage and same-sex marriage."[32] Only time will tell whether the Wage and Hour Division will make such a change to its definitions.

5. *Windsor* Applies Only to Same-Sex Marriages, Not to Civil Unions or Domestic Partnerships

In Revenue Ruling 2013-17,[33] in which it defined the terms "spouse" and "marriage" for federal tax purposes, the IRS expressly stated that these terms "do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term 'marriage' does not include such formal relationships."

31. *See* U.S. Dep't of Labor, Emp. Benefits Sec. Admin., *Technical Release 2013-04, Guidance to Employee Benefit Plans on the Definition of "Spouse" and "Marriage" under ERISA and the Supreme Court's Decision in United States v. Windsor* (Sept. 18, 2013), www.dol.gov/ebsa/pdf/tr13-04.pdf.

32. U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #28F: Qualifying Reasons for Leave under the Family and Medical Leave Act* (Aug. 2013), www.dol.gov/whd/regs/compliance/whdfs28f.htm.

33. This ruling is cited in full at note 18, above.

6. *Windsor* Does Not Change the Ability of North Carolina Local Government Employers to Offer, by Their Own Choice, Benefits to the Same-Sex Spouses or Domestic Partners of Employees

The decision in *Windsor* did not, in the author's opinion, change in any way the ability of North Carolina local government employers to offer to domestic partners benefits such as health insurance, dental insurance, life insurance, wellness incentives, or any other benefit of the sort typically extended to those recognized as husbands and wives under North Carolina law. For a detailed discussion of the ability of North Carolina local government employers to offer domestic partner benefits, see the following publications by the author:

- "Amendment One, North Carolina Public Employers, and Domestic Partner Benefits," *Public Employment Law Bulletin* No. 39 (UNC School of Government, June 2012)[34]
- "May North Carolina Local Government Employers Offer Domestic Partner Benefits?" *Public Employment Law Bulletin* No. 37 (UNC School of Government, Nov. 2009)[35]

34. Available online at http://sogpubs.unc.edu/electronicversions/pdfs/pelb39.pdf.
35. Available online at http://sogpubs.unc.edu/electronicversions/pdfs/pelb37.pdf.