

MARCH 2011

## The Department of Justice Will No Longer Defend the Defense of Marriage Act (“DOMA”)

On February 23, 2011, Attorney General Eric Holder announced that the Department of Justice will no longer defend the constitutionality of DOMA. DOMA, enacted in 1996, sets forth, in part, that:

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.

DOMA prohibits the federal government from recognizing same-sex marriage, even in those states where same-sex marriage has been legalized, such as Connecticut, Massachusetts and Vermont. Because ERISA and the Internal Revenue Code (the “Code”) are federal laws, retirement plans and other employee benefit plans that are subject to ERISA and/or the Code are required to comply with DOMA.

The significance of the Attorney General’s announcement is uncertain. While the Department of Justice has been instructed not to defend the constitutionality of DOMA as applied to same-sex couples whose marriages are legally recognized under state law, ***the remainder of the Obama Administration will continue to enforce DOMA***. Notably, President Obama has instructed federal agencies (e.g., the U.S. Treasury and the Department of Labor) to continue to comply with DOMA.

The bottom line is that, notwithstanding the mixed messages being sent by the federal government, employers should continue to comply with the mandates set forth in DOMA. Absent any further action by Congress to repeal it or a ruling by a federal court that is binding in your jurisdiction, DOMA continues to be governing federal law. We will continue to monitor developments in the law and advise our clients regarding DOMA.

### **Questions or Assistance?**

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