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## What the Same-Sex Marriage Ruling Means to Employers

The Supreme Court ruled today that state laws banning same-sex marriage are unconstitutional under the 14<sup>th</sup> Amendment to the United States Constitution. While this holding does not directly implicate employers or their policies, the ruling clearly means that persons legally married in any state, regardless of their gender, are entitled to the benefits of marriage in any other state in the union and that a state can no longer refuse to issue marriage licenses to persons based on their gender. "The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character." Slip op. at 28.

In addition to reexamining benefit policies to be sure that same-sex married couples are not discriminated against, employers need to be mindful that this decision highlights the trend of extending constitutional protections to gay, lesbian, bi-sexual, and transgendered persons. While some may still debate whether sexual orientation is a protected class (see <http://www.kansascity.com/news/government-politics/article9694028.html> re Governor Brownback of Kansas rescinding protect-class status for sexual orientation in Kansas versus <http://www.eeoc.gov/federal/otherprotections.cfm> the EEOC's position that sexual orientation is a protected class), in my opinion, it appears most likely that any limitation on sexual orientation being a protected class will ultimately prove to be invalid.

Because harassment of persons due to their sexual orientation is considered to be sexual harassment prohibited by Title VII (sex discrimination consisting of same-sex sexual harassment is actionable under Title VII, *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998)) and because today's ruling in the same-sex marriage case may be a topic of conversation in your workplace, it may be a good opportunity for employers to remind their supervisors and their workforce that harassment based on sexual orientation will not be tolerated.

If you are interested in reading today's ruling, here is a link to it:  
[http://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)

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