

## **Why Is A Federal Estate Tax Case Before The United States Supreme Court Important To Employers?**

By Susan Richards Salen

The arguments before the United States Supreme Court in the *Windsor v. United States* case were followed by legal scholars, as well as proponents and opponents of same sex marriages and other similarly situated constituencies. So, why is this case about federal estate taxes of interest to an employer?

The plaintiff in *Windsor*, Edith Windsor, is required to pay federal estate taxes on an inheritance that she received from her deceased same-sex spouse, Thea Spyer (whom she married in Canada) because, due to the federal Defense of Marriage Act (DOMA), Ms. Windsor is not recognized as a spouse under federal law. DOMA defines “marriage” as “only a legal union between one man and one woman as husband and wife,” and “spouse” as referring “only to a person of the opposite sex who is husband or wife.” Ms. Windsor contested her obligation to pay the estate taxes and asserted that DOMA was unconstitutional and violates the equal protection clause to the 14<sup>th</sup> Amendment to the U.S. Constitution. Ms. Windsor won her case in the U.S. District Court for the Southern District of New York and in the United States Circuit Court for the Second Circuit. The case was appealed to the Supreme Court.

So why does a federal estate tax and DOMA case matter to an employer? DOMA affects what employers can and may do for employees’ partners and spouses. If the Court overturns DOMA, there will be new federal treatment of same-sex marriage under federal law and the ruling could also invalidate state DOMAs. Thus, employers will have to extend benefits to same-sex spouses and modify other policies relating to spouses. **Stay tuned.**

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