

2014 Multistate Payroll Guide

JOHN F. BUCKLEY



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About the Author

The *2014 Multistate Payroll Guide* was prepared by the attorneys of the National Legal Research Group. Founded in 1969, the National Legal Research Group has provided consulting and research services to attorneys on more than 100,000 cases.

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Preface

Multistate Payroll Guide is a valuable professional tool designed to keep payroll professionals abreast of the increasingly complex state rules that govern important payroll matters. Each chart provides citations to current state statutes regulating important payroll and tax issues.

Multistate Payroll Guide's easy-to-use format is concise and visually appealing. The reader can readily locate information concerning one state's treatment of a particular issue or compare the treatment required by several different states—all on the same chart.

1. **Payroll Trends and Issues.** In the Payroll Trends and Issues section the reader will find coverage of important, cutting-edge topics, which have recently emerged in state and federal regulation of payroll.
2. **Wages and Hours.** Most states have enacted minimum wage acts to supplement federal laws or to address specific trades not covered under federal law. Refer to this chapter for a quick summary of these wage and hour laws. Topics of special importance include minimum and subminimum wage requirements, overtime compensation, compensatory time off in lieu of overtime, employment of minors, and penalties for noncompliance.
3. **Reporting and Recordkeeping Requirements.** New-hire reporting has become an integral part of the payroll function, and small variations in state new-hire reporting requirements can present big problems for payroll professionals with multistate corporations. This chapter sets out new-hire reporting requirements for all states and discusses the multistate employer option. (Available state new-hire reporting forms are provided in Appendix C.) Covered topics also include general recordkeeping requirements, additional recordkeeping requirements for minors, and penalties for violations.
4. **Payroll Administration.** Refer to this chapter for state information on the administration of payroll, such as state requirements concerning permissible methods of wage payment and statutory penalties for violation, minimum frequency of wage payments, treatment of unclaimed wages, and wage payments due on termination or death. Also discussed are garnishment requirements—for both support and nonsupport payments—and permissible employer deductions from wage payments (e.g., union dues, medical testing, charges for employee theft or breakage, and charitable contributions).
5. **Health Insurance and Disability Benefits.** Increased state regulation of benefits makes this chapter an important aid for tracking payroll requirements concerning continuation of coverage and short-term disability benefits.
6. **Family and Medical Leave Laws.** Thirty-nine states and the District of Columbia have some form of family and/or medical leave laws. These laws present a number of questions regarding eligibility, covered reasons for taking leave, and recordkeeping requirements. Three charts in this chapter cover statutory requirements under state family and medical leave laws, and there is an extensive discussion of judicial and regulatory interpretations of the most difficult requirements and issues. A fourth chart covers the states' laws on leave to donate blood, bone marrow, and organs.
7. **Unemployment Taxes.** Determining which benefits are taxable for purposes of state unemployment taxation can be an onerous task. Charted information includes state unemployment tax rates and distinguishes which specific types of compensation are to be treated as taxable compensation (e.g., jury duty pay, military duty pay, sick pay, vacation pay, commission payments, tips, death benefits, severance pay, workers' compensation, FICA, retirement plan contributions, life insurance, cafeteria plan benefits, gifts, group legal expenses, moving expense reimbursement, and tuition reimbursement). Other important topics are determining which jurisdiction may claim coverage of employees who work in more than one state, interstate reciprocal coverage arrangements, and employer contributions and recordkeeping requirements.
8. **Unemployment Benefits.** This chapter provides comprehensive coverage of state unemployment compensation rules. Charted information identifies which categories of employers and employees are subject to state unemployment compensation laws, which exemptions apply, how student status affects unemployment

compensation, which events are considered disqualifying, how to determine and reestablish an employee's benefit eligibility, and how to calculate benefits.

- 9. Calculation of Income.** Although each state taxes individuals under its own statutes, most states partially or fully adopt, or at least refer to, specific portions of the Internal Revenue Code (I.R.C.) that govern federal taxation. Most states conform to the I.R.C.'s definition of income with certain defined modifications. This chapter indicates which specific exclusions from income each state has adopted (e.g., retirement plan contributions, life insurance, travel and entertainment expenses, and relocation expenses).
- 10. State Withholding and Reporting Requirements.** This chapter contains important information about payroll withholding requirements. Covered topics include the following:
- *Reporting and payment requirements.* These charts provide an explanation of threshold amounts for reporting purposes, required frequency of reporting, appropriate form names and numbers, filing due dates, penalties for noncompliance, and important contact information.
 - *Determining withholding requirements.* These charts display the rules for withholding income for residents and nonresidents and provide a simple summary of those states that sponsor reciprocal agreements. Also covered are employees exempt from withholding requirements.
 - *Compensation subject to withholding.* Treatment of additions to base salary such as jury duty pay, sick pay, vacation pay, commissions, tips, death benefits, severance pay, workers' compensation, retirement plan contributions, life insurance, cafeteria plan benefits, gifts, group legal expenses, moving expense reimbursement, and tuition reimbursement.
 - *Additional administrative requirements.* These charts summarize state requirements relating to magnetic media, electronic funds transfers, and multiple worksite reporting.

Appendix A: This appendix has been divided into three parts.

Part 1: Directory of State Revenue Departments. A current list of the names, mailing addresses, telephone numbers, and Internet sites of state revenue departments provides the reader with an important resource for obtaining case- or issue-specific information not addressed herein.

Part 2: Directory of State Unemployment Insurance Agencies. An up-to-date list of state departments to contact for information on unemployment insurance. Separate listings for state disability insurance agencies have been provided where available.

Part 3: Directory of State New-Hire Reporting Departments. This part contains contact information and Internet sites for state new-hire reporting agencies to aid employers in complying with new-hire reporting requirements.

Appendix B: State Withholding Percentage Method Calculation Formulas. This appendix contains the instructions and tables used in calculating the income tax withholding for each state using the percentage or computer method.

Appendix C: State New-Hire Reporting Forms. These forms can be reproduced and used to submit required data on new hires pursuant to state and federal law.

Index. A comprehensive index cross-references related topics and subordinate subjects between chapters.

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—JFB

Table of Contents

A complete table of contents for each chapter appears at the beginning of the chapter.

Preface

Acknowledgments

Chapter 1 Payroll Trends and Issues

- § 1.01 Supreme Court Decisions Invalidate Section 3 of DOMA, Proposition 8
- § 1.02 Health Care Legislation
- § 1.03 Worker Eligibility Issues
- § 1.04 Worker Classification Issues
- § 1.05 Paid and Unpaid Leave from Work
- § 1.06 Joint Federal-State Tax Payment Initiative to Combat Employment Tax Evasion
- § 1.07 Wage and Hour Law Issues
- § 1.08 Health Savings Accounts—Current Issues
- § 1.09 Withholding—Pennsylvania Job Promotion Act
- § 1.10 Tax Credits Available for Hiring Veterans
- § 1.11 Federal Employment Taxes
- § 1.12 Congress Extends Unemployment Benefits Through 2013
- § 1.13 Employer Liable for Payroll Taxes Despite Embezzlement by Payroll Service
- § 1.14 The Pension Protection Act of 2006 and Payroll
- § 1.15 Limiting Use of Social Security Numbers on Pay Stubs and Other Documents
- § 1.16 States Enact Electronic Signature and Digital Records Laws
- § 1.17 Plastic Provides Paperless Payments for Employees
- § 1.18 Qualified Transportation Fringe Benefits
- § 1.19 Domestic Partner Benefits and Same-Sex Unions

Chapter 2 Wages and Hours

- § 2.01 The Various Forms of Employment Relationships
- § 2.02 The Fair Labor Standards Act and State Regulation of Employment
- § 2.03 Minimum Wage Requirements and Exemptions
- § 2.04 Subminimum Wage Provisions
- § 2.05 Overtime Compensation Requirements and Exemptions
- § 2.06 Compensatory Time Off in Lieu of Overtime
- § 2.07 Penalties for Violating Minimum Wage Laws and Overtime Provisions
- § 2.08 State Laws on Employment of Minors and Penalties for Violations
- § 2.09 Meal and Rest Period Requirements

Chapter 3 Reporting and Recordkeeping Requirements

- § 3.01 State New-Hire Reporting Requirements
- § 3.02 Recordkeeping Requirements
- § 3.03 Penalties for Violating Recordkeeping Requirements

Chapter 4 Payroll Administration

- § 4.01 Permissible Methods of Wage Payment
- § 4.02 Continuing Compensation Requirements and Penalties

- § 4.03 Garnishment and Support Withholding
- § 4.04 Permitted Deductions from Wage Payments
- § 4.05 Unclaimed Wages
- § 4.06 Wage Payments Due on Termination or Death of Employee
- § 4.07 Pay Stub Requirements

Chapter 5 Health Insurance and Disability Benefits

- § 5.01 ERISA and State Benefit Laws
- § 5.02 Health Insurance Plans and Benefits
- § 5.03 Disability Benefits

Chapter 6 Family and Medical Leave Laws

- § 6.01 Covered Employers
- § 6.02 Eligible Employees
- § 6.03 IRS Regulations Regarding the FMLA and Cafeteria Plans
- § 6.04 Covered Reasons for Taking FMLA Leave
- § 6.05 When Must Leave Begin for Birth or Adoption of a Child?
- § 6.06 Length of FMLA Leave
- § 6.07 Notice to Employer
- § 6.08 Unpaid Nature of Leave
- § 6.09 Continuation of Benefits
- § 6.10 Fraud by Employee
- § 6.11 Notice Posting Requirements Under the FMLA
- § 6.12 Individualized Notice Requirement
- § 6.13 Waiver of Rights
- § 6.14 Required Recordkeeping Under the FMLA

Chapter 7 Unemployment Taxes

- § 7.01 Federal Taxation Under FUTA
- § 7.02 State Unemployment Tax
- § 7.03 Employees Subject to Unemployment Taxation: Interstate Reciprocal Coverage
- § 7.04 Employer Contributions and Recordkeeping Requirements
- § 7.05 State Unemployment—Taxable Compensation
- § 7.06 State Unemployment—Taxable Benefits
- § 7.07 Unemployment Compensation: Fund Balance and Employer Contribution Rate Information

Chapter 8 Unemployment Benefits

- § 8.01 Federal-State Collaboration in Administering and Funding Unemployment Compensation
- § 8.02 Unemployment Compensation: Eligibility, Disqualifying Events, and Reestablishment of Eligibility
- § 8.03 Benefits Eligibility Criteria and Payouts

Chapter 9 Calculation of Income

- § 9.01 The Internal Revenue Code and State Income Tax
- § 9.02 Exclusions from Income Under State Law

Chapter 10 State Withholding and Reporting Requirements

- § 10.01 Withholding
- § 10.02 Reciprocity Agreements

- § 10.03 Electronic/Magnetic Filing and Electronic Funds Transfers (EFTs)
- § 10.04 Multiple Worksite Reporting
- § 10.05 Employees Subject to Withholding
- § 10.06 Exempt Employees
- § 10.07 Taxable Compensation
- § 10.08 State Withholding on Death, Pension, and Salary Continuation Benefits
- § 10.09 Benefits Withholding
- § 10.10 Supplemental Wage Withholding Methods and Rates

Appendix A: Part 1: Directory of State Revenue Departments

Part 2: Directory of State Unemployment Insurance Agencies

Part 3: Directory of State New-Hire Reporting Departments

Appendix B: 2014 State Withholding Percentage Method Calculation Formulas

Appendix C: State New-Hire Reporting Forms

Index

1

Payroll Trends and Issues

§ 1.01 Supreme Court Decisions Invalidate Section 3 of DOMA, Proposition 8	1-3	[E] Update on State Compliance with DHS REAL ID Regulations	1-18
§ 1.02 Health Care Legislation	1-6	[F] DOL Offers Internet System for Multiple Worksite Reports	1-19
[A] Medical Insurance Requirement	1-6	§ 1.04 Worker Classification Issues	1-20
[B] Pertinent Payroll Provisions	1-7	[A] Federal, State Memorandum of Understanding (MOU) to Combat Worker Misclassification	1-20
[1] Form W-2 Reporting	1-7	[B] Voluntary Classification Settlement Program	1-20
[2] Additional Medicare Tax	1-7	[C] IRS Guidance on Correcting Misclassified Employee Reporting	1-20
[3] HSAs, HRAs, and FSAs	1-7	[D] State Laws Combat Misclassification	1-21
[4] Cafeteria Plan Health FSAs	1-8	§ 1.05 Paid and Unpaid Leave from Work	1-29
[5] Simple Cafeteria Plans	1-8	[A] Supreme Court Decides States Are Immune from Suit for Damages Under FMLA's Self-Care Provision	1-29
[6] Breastfeeding Break Time	1-9	[B] DOL Published Revision to FMLA Regulations	1-30
[7] Adult-Child Coverage Extension	1-9	[C] FMLA Leave for Family of Injured Military Service Members and Veterans	1-30
[8] Other Tax Provisions	1-9	[1] Certification Requirements	1-31
[C] State Health Care Legislation	1-10	[2] Incorporation	1-32
[D] Web Tool Assists Search for Health Coverage Options	1-11	[3] Leave Extended to Family of Veterans	1-32
§ 1.03 Worker Eligibility Issues	1-12	[D] California Law Preceded Federal Law to Grant Leave for Military Spouses	1-32
[A] Supreme Court Decides Cases Involving Arizona's Unauthorized Worker Laws	1-12	[E] New Jersey is Third State to Enact Paid Family Leave Legislation	1-33
[1] The Legal Arizona Workers Act	1-12	[F] Mandatory Leave for Organ and Bone Marrow Donors	1-33
[2] The Support Our Law Enforcement and Safe Neighborhoods Act	1-12	§ 1.06 Joint Federal-State Tax Payment Initiative to Combat Employment Tax Evasion	1-35
[B] Federal Immigration and Employment Verification Initiatives	1-13	§ 1.07 Wage and Hour Law Issues	1-36
[1] Federal Employment Verification Program	1-13	[A] Work-Share Program Adopted in Wisconsin	1-36
[2] Revised Form I-9	1-14	[B] Proposed Bills and Regulations Would Extend FLSA Protections to Home Care Workers	1-36
[C] States Enact Immigration and Employment Verification Measures	1-14		
[D] Fines Against Employers for Federal Immigration Violations	1-17		
[1] Background	1-17		
[2] Knowingly Employing Undocumented Workers	1-17		
[3] Antidiscrimination Obligations	1-17		
[4] Record Retention	1-18		
[5] Document Fraud	1-18		

[C] New York, Hawai Domestic Workers' Bill of Rights Includes Payroll Provisions ...	1-37	[B] Employment Tax Issues Relating to Separation Payments	1-48
[D] New York, California Enact Wage Protection Legislation	1-37	§ 1.12 Congress Extends Unemployment Benefits Through 2013	1-50
[E] California Supreme Court Rules Employers Need Not Ensure Workers Take Meal Breaks	1-38	§ 1.13 Employer Liable for Payroll Taxes Despite Embezzlement by Payroll Service	1-51
[F] Limiting Mandatory Overtime	1-39	§ 1.14 The Pension Protection Act of 2006 and Payroll	1-52
[G] House Passes Compensatory Time Off Bill	1-40	§ 1.15 Limiting Use of Social Security Numbers on Pay Stubs and Other Documents	1-53
[H] Treatment of Bonuses Under Wage Payment Laws	1-41	§ 1.16 States Enact Electronic Signature and Digital Records Laws	1-55
[I] Mississippi Bans Local "Living Wage" Ordinances	1-43	§ 1.17 Plastic Provides Paperless Payments for Employees	1-56
§ 1.08 Health Savings Accounts—Current Issues	1-44	§ 1.18 Qualified Transportation Fringe Benefits	1-58
[A] IRS Guidance	1-44	[A] Monthly Dollar Limits	1-58
[B] Final Regulations on Comparability Rules	1-44	[B] Salary Reduction Arrangements	1-58
[C] State Tax Treatment of HSAs	1-45	[C] Use of SmartCards and Other Electronic Media	1-59
§ 1.09 Withholding—Pennsylvania Job Promotion Act	1-46	[D] State Tax Credits	1-59
§ 1.10 Tax Credits Available for Hiring Veterans	1-47	§ 1.19 Domestic Partner Benefits and Same-Sex Unions	1-60
[A] VOW to Hire Heroes Act	1-47		
[B] State Tax Credits	1-47		
§ 1.11 Federal Employment Taxes	1-48		
[A] Taxpayer Relief Act Averts Income Tax Increase for Most Americans ...	1-48		

§ 1.01 Supreme Court Decisions Invalidate Section 3 of DOMA, Proposition 8

On June 26, 2013, the Supreme Court issued two major decisions affecting the marriage rights of same-sex couples. The case with the widest impact is *United States v. Windsor*,¹ which involved a provision of the federal Defense of Marriage Act (DOMA)² prohibiting the recognition of same-sex marriages for purposes of federal law. In that case, the Court held Section 3 of DOMA unconstitutional as a deprivation of liberty interests protected by the Fifth Amendment. The Court further held that in determining the marital status of same-sex couples, as in determining the marital status of opposite-sex couples, the federal government must defer to state law. In the other case, *Hollingsworth v. Perry*,³ the Court held that the parties appealing the case to the Court lacked standing to challenge the trial court's decision in the case, which had invalidated California's Proposition 8—a voter-enacted ballot initiative that amended the California Constitution to provide that only marriage between a man and a woman is valid. The practical effect of the Court's decision is to reinstate the trial court's ruling, which had allowed same-sex marriages in California to resume.

The *Windsor* case involved a taxpayer who, as the surviving spouse in a valid same-sex marriage under New York law, was denied the benefit of the spousal deduction for federal tax purposes in accord with Section 3 of the DOMA. She brought suit for a refund of federal estate taxes and for a declaration that Section 3 of the DOMA violated her rights under the Fifth Amendment to the Constitution. The Court held that the DOMA's definition of "marriage" for purposes of federal law as a legal union only between a man and a woman, and of "spouse" only as a person of the opposite sex who was a husband or wife, was unconstitutional as a deprivation of personal liberty protected by the Fifth Amendment. A majority of five Justices held that the Act's deviation from the long-standing federal tradition of recognizing and accepting state definitions of marriage deprived same-sex couples of the benefits and responsibilities that come with federal recognition of marriage, and further placed a stigma

upon all who entered into same-sex marriages made lawful by the unquestioned authority of the states. Thus, the taxpayer was entitled to a refund in the amount of the spousal deduction for the tax year in question. Significantly, Section 2 of the DOMA, which provides that no state shall be required to recognize a same-sex marriage entered into in another jurisdiction, was not affected by the *Windsor* decision.

The *Hollingsworth* case arose when same-sex couples who had been denied marriage licenses in California brought a civil rights action against the governor and other state and local officials, claiming that Proposition 8, which had eliminated the preexisting right of same-sex couples to marry in that state, violated their rights to due process and equal protection under the Fourteenth Amendment to the Constitution. After a bench trial, the trial court granted judgment for the plaintiffs, declaring Proposition 8 unconstitutional. The Supreme Court did not reach the merits of the constitutional issue, but its conclusion that the appellants in the case (proponents of Proposition 8) lacked standing to appeal the trial court's ruling has had the practical effect of reinstating same-sex marriage in California.

As discussed above, the Supreme Court in *Windsor* found Section 3 of DOMA to be unconstitutional. Section 3 of DOMA reads, in part, "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." In other words, under DOMA, the federal government only recognized marriages among two persons of the opposite sex, and made federal benefits unavailable to same-sex couples (such as the ability to file a joint federal tax return). This part of DOMA applied even to those married in states that permit such marriages. But with the Supreme Court's decision in *Windsor*, this non-recognition of same-sex marriages by the federal government is no longer permitted.

Given the varying opinions regarding the impact of this decision, it is important to objectively analyze what the Court actually decided in this case. First of all, it is helpful to understand what the Court did not do in *Windsor*, and the most significant point in that respect is that the Court did not invalidate Section 2 of DOMA. Under Section 2, Congress created a statutory exception to the Full Faith and Credit clause of the U.S.

1. No. 12-307, 2013 WL 3196928 (U.S. June 26, 2013).

2. 1 U.S.C. § 7.

3. No. 12-144, 2013 WL 3196927 (U.S. June 26, 2013).

Constitution. This clause, found in Article IV, Section 1, requires states to recognize “public acts, records, and judicial proceedings” of other states, subject to limitations imposed by Congress. Under Section 2 of DOMA, Congress imposed a specific “limitation” which carved out an exception to full faith and credit, whereby states are not required to recognize same-sex marriages performed in other states. Consequently, Section 2 still stands. It is Section 3 that the Court invalidated in *Windsor*.

As far as state law is concerned, *Windsor* may not have a great impact. A state may still refuse to permit same-sex marriages from being conducted within its borders. A state is also still free to refuse to recognize same-sex marriages performed in other states.

For instance, assume that a state permits same-sex marriages. That state may or may not choose to recognize as valid same-sex marriages performed in other states. Given that the choice to recognize same-sex marriages is largely motivated by a particular public policy position, it stands to reason that a state permitting same-sex marriages will likely choose to recognize such marriages that have been validly performed in foreign jurisdictions. On the other hand, most states that do not recognize same-sex marriages performed within the state will not recognize same-sex marriages performed in other states. Finally, even a state that recognizes same-sex marriages would be unlikely to recognize the validity of a purported same-sex union formed unlawfully in a foreign jurisdiction under whose laws such unions are not permitted.

A state that does not recognize same-sex marriages is still free to recognize same-sex marriages validly performed in foreign jurisdictions, however. Maryland, New York, and Rhode Island recognized out-of-state same-sex marriages as valid some time before allowing such marriages within those states. However, if a state’s public policy stance is that a marriage is limited to opposite-sex couples, recognition of same-sex marriages performed in foreign jurisdictions is unlikely. Note that over half the states have enacted constitutional provisions defining marriage as limited to one man and one woman only, and the majority of states do not permit same-sex marriage. In these states, it can be reliably predicted that same-sex marriages performed in other states will not be recognized for any purpose.

When it comes to federal law, *Windsor* may have a significant impact, although there is still some uncertainty here as well. Prior to the *Windsor* decision, federal law under Section 3 of DOMA did not regard any same-sex marriages as valid for the purpose of federal benefits. The question post-*Windsor* is how will the

federal government view the status of same-sex couples when it comes to such benefits? Significantly, a 1958 ruling by the Internal Revenue Service, and subsequent court decisions based on this ruling, may shed some light on this question.⁴ According to this ruling, for the purpose of establishing eligibility to file a joint federal tax return, “the marital status of the two individuals is to be determined under the laws of the state of their residence.” In other words, state law controls. Just as a federal court will apply state law when hearing a case between litigants of two different states (when jurisdiction is based upon diversity of citizenship), the federal government will defer to a state’s law regarding whether to recognize a certain same-sex marriage as valid.

Assuming these holdings continue to inform the federal government’s stance toward married individuals, it stands to reason that same-sex couples who marry and continue to reside in states permitting same-sex unions will be afforded all the federal benefits available to all married couples. It also stands to reason that same-sex couples which cannot lawfully be joined as partners under state law will be precluded from enjoying such federal benefits.

An intriguing question arises when a same-sex couple, lawfully married under state law, moves and takes up residence in a state in which only opposite-sex marriages are recognized. Under the logic of the revenue ruling, that couple would lose its right to federal benefits for married couples because state law precludes the recognition of such same-sex unions. The position of the Obama administration on this question may be contrary to this revenue ruling, however. President Obama recently told reporters at a news conference that, in his opinion, a lawfully married couple who moves to another state should not lose federal benefits.

Whether the federal government will continue to recognize the long-standing rule that state law informs its recognition of the validity of same-sex marriages is another question. Since the revenue ruling was purely an administrative order, it could be changed without the need for congressional action. Congress, with the president’s approval, could also choose to alter this administrative rule. Furthermore, Congress could enact legislation determining that it will recognize any facially valid marriage license, regardless of the state residence

4. Von Tersch v. Comm’r, 47 T.C. 415, 419 (1967) (citing Rev. Rul. 58-66, 1958-1 C.B. 60); Lipton v. Comm’r, T.C. Summ. Op. 2007-36, 2007 WL 686349, at *4 (2007).

of the parties. If such legislation became law, same-sex couples wishing to be married could travel to a state that authorizes the performance of same-sex marriages, get married there, and then be entitled to federal benefits regardless of their state of residence. The enactment of such legislation, however, is unlikely unless there is a significant change in the makeup of Congress. Congress could also pass legislation essentially codifying the position of the revenue ruling. Such legislation is unlikely to overcome an inevitable veto by the President, however, given the current voting patterns in Congress.

Note: On August 29, 2013, the Treasury Department and the IRS issued a Revenue Ruling [Rev. Rul. 2013-17] to the effect that same-sex couples, legally married in jurisdictions that permit same-sex marriages, will be treated as married for federal tax purposes regardless of where they reside. The ruling is effective September 16, 2013. As of press time,

other federal agencies have yet to announce the manner in which they will implement the *Windsor* decision. (Revenue Ruling 2013-17 is available as a link from the following Web page: [www.irs.gov/uac/New room/Treasury-and-IRS-Announce-That-All-Legal-Same-Sex-Marriages-Will-Be-Recognized-For-Federal-Tax-Purposes;-Ruling-Provides-Certainty,-Benefits-and-Protections-Under-Federal-Tax-Law-for-Same-Sex-Married-Couples](http://www.irs.gov/uac/New%20room/Treasury-and-IRS-Announce-That-All-Legal-Same-Sex-Marriages-Will-Be-Recognized-For-Federal-Tax-Purposes;-Ruling-Provides-Certainty,-Benefits-and-Protections-Under-Federal-Tax-Law-for-Same-Sex-Married-Couples))

For more information on same-sex unions, domestic partnerships, and payroll considerations, see § 1.19 below.