

# One Minute Memo<sup>®</sup>



## Ninth Circuit Rules that a Domestic Partner Under California State Law Was a Spouse for an ERISA Plan

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In an unpublished decision dated May 16, 2019, the Ninth Circuit held that a plan administrator abused its discretion by denying surviving spouse benefits under an ERISA retirement benefit plan to a participant's domestic partner.

The plaintiff and his partner (the plan participant) registered as domestic partners in California in 2004. Under California law, registered domestic partners were given the same rights as spouses, and the same protections and benefits. The participant retired in 2009 and began receiving his pension benefits as a single-life annuity. The plaintiff and the participant married in 2014, and the participant died five days later. The plan benefits ceased on the participant's death, consistent with the operation of a single life annuity.

The plaintiff filed a claim with the plan administrator for spousal benefits, and the claim was denied based on the plan administrator's interpretation of the term "spouse" in the plan, in a manner that excluded domestic partners. The plaintiff sued in the Northern District of California, and the district court held that the plan administrator did not abuse its discretion in interpreting "spouse" under the plan to exclude domestic partners.

The Ninth Circuit reviewed the plan administrator's decision for abuse of discretion, overturned the district court's decision and remanded the case to order payments from the plan to the plaintiff. In a very short written opinion, the Ninth Circuit found that neither ERISA nor the Internal Revenue Code contained a binding interpretation of "spouse" after the Supreme Court found the Defense of Marriage Act ("DOMA") to be unconstitutional. (The Ninth Circuit reasoned that as the Supreme Court found DOMA had never been constitutional, the decision striking down DOMA needed to be applied retroactively.) The plan's choice of law provision indicated that the plan should be interpreted in accordance with California law as consistent with ERISA and the Internal Revenue Code. In this revisionist view of looking back and excising DOMA, the Court found that because California law gave registered domestic partners the same rights as spouses and that was not inconsistent with ERISA or the Internal Revenue Code (again ignoring DOMA), the plan administrator should have interpreted the term "spouse" to include registered domestic partners. The Ninth Circuit specifically stated that the plan administrator should have given the plaintiff benefits as a spouse under the plan, which would have included the right to consent to the participant's election of a single life annuity.

While unpublished opinions are non-precedential, this decision is important as it reflects the ongoing efforts to make the survivors of same-sex relationships whole. Related litigation has focused on efforts to provide surviving spouse social security

benefits. While this decision is unpublished, plan administrators should not hesitate to reach out to legal counsel in order to assess what if any implications this decision may have both in terms of copy-cat litigation and plan administration.

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