

## Ninth Circuit Rules ERISA Pension Plan Must Pay Survivor Benefits to Registered Domestic Partner

In a short, unpublished [opinion](#), the Ninth Circuit Court of Appeals ruled that an ERISA pension plan administrator should have treated a deceased participant's registered domestic partner as a surviving spouse and granted his claim for survivor benefits.

The case turned on the fact that the pension plan document specifically incorporated California law, which has long required that registered domestic partners be given the same rights, protections, and benefits under law as are granted to spouses. The terms "spouse" and "married" were not defined in the plan document. Under the choice of law provision in the plan document, the plan was to be "administered and its provisions interpreted in accordance with the laws of the State of California and in a manner consistent with the requirements of the [Internal Revenue] Code and ERISA." The Court of Appeals held that the plan's incorporation of California law meant the term "spouse" must include a domestic partner, and that neither ERISA nor the Code provided binding guidance that was inconsistent with that interpretation.

### Background

The claimant in the case, Mr. Reed, and the plan participant, Mr. Gardner, entered into a registered domestic partnership under California law in 2004, at a time when the state restricted civil marriage to opposite-sex couples only. In 2009, Gardner retired and began receiving benefits from the plan in the form of a single life annuity, under which no survivor benefits would be paid. In 2014, after civil marriage became available for same-sex couples, the couple was married. Following Gardner's death, Reed applied to the plan administrator for survivor benefits.

The plan's administrator denied Reed's claim on the basis that: (1) survivor benefits were payable only under the "qualified joint and survivor annuity" ("QJSA") benefit form required by the Code and ERISA, and (2) the QJSA applied only to plan participants who were married at the time of retirement. The claim denial letter explained that the plan's administrator had consistently interpreted the term "spouse" to exclude domestic partners.

When Reed sued the plan in federal district court, the court ruled for the plan. The lower court first held that ERISA did not preempt



by Elizabeth J. Masson

California law with respect to the treatment of registered domestic partners as spouses. Although the term "spouse" had been defined under the federal Defense of Marriage Act ("DOMA") to mean married persons of the opposite sex, that definition was invalidated by the U.S. Supreme Court in the 2013 [Windsor](#) case. Applying the Windsor case retroactively, the lower court held that no definition of "spouse" existed under federal law at the time of Gardner's retirement, and that Reed could qualify as a surviving spouse under the plan. However, the court held that, because DOMA was "still considered good law" when Gardner had retired in 2009, the plan administrator had no choice but to apply the DOMA definition of "spouse", and had not abused its discretion in interpreting the term "spouse" as excluding domestic partners.

## Court of Appeals Ruling

The Ninth Circuit reversed the lower court's decision, holding that the plan administrator had abused its discretion in denying survivor benefits to Reed. The Court of Appeals found that, both at the time of Gardner's retirement, in 2009, and when the claim was made, in 2016, California law gave domestic partners the same rights, protections and benefits as those granted to spouses. The Court also ruled that neither ERISA nor the Code provided "binding guidance" inconsistent with applying that interpretation of "spouse" to the plan. Accordingly, the Court ruled that the plan administrator should have awarded Reed spousal benefits in accordance with California law, as was required by the plan's choice-of-law provision.

The Court of Appeals did not address the plan's argument that payment of benefits to a domestic partner in the form of a QJSA would be inconsistent with IRS [Revenue Ruling 2013-17](#), issued after the *Windsor* decision to explain how the IRS would interpret sections of the Code that refer to taxpayers' marital status in light of the Supreme Court's ruling. Revenue Ruling 2013-17 provides that, for federal tax purposes, the term "marriage" does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state law that are not denominated as marriage under that state's law. The plan also argued that its decision complied with federal law requirements under IRS [Notice 2014-19](#), which provides that the holdings of Revenue Ruling 2013-17 apply to tax-qualified retirement plans, including the requirement to provide a QJSA for married participants.

The plan filed a petition for rehearing with the Ninth Circuit on May 29, 2019, on the basis that the decision would require plans to recalculate benefits that have already been fully paid, potentially going back for 23 years, when DOMA first became law. Hanson Bridgett will monitor the case and provide an update on any new rulings.

For more information, please contact:

**Elizabeth J. Masson**, Partner  
415-995-5106  
LMasson@hansonbridgett.com