



**LHWCA BULLETIN NO. 14-04** <sup>1</sup>

**Issue Date: June 18, 2014**

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**Subject:** Determining benefits based on same-sex marriage following the Supreme Court's decision in *United States v. Windsor*.

**Background:** On June 26, 2013, the Supreme Court held unconstitutional section 3 of the Defense Against Marriage Act (DOMA), which had provided that, in any federal statute, the term "marriage" means a legal union between one man and one woman as husband and wife, and that "spouse" means only a person of the opposite sex who is a husband or wife. *United States v. Windsor*, 133 S. Ct. 2675 (2013).

The *Windsor* decision impacts the payment of death benefits under 33 U.S.C. § 909 and 42 U.S.C. § 1652, and disability compensation unpaid at time of death under 33 U.S.C. § 908(d). These sections and their implementing regulations mandate benefits to "a widow or widower," to a "surviving wife or husband," or to a "surviving spouse." 33 U.S.C. § 909(b), (c), (d); 33 U.S.C. § 908(d)(1) (A)-(D); 20 C.F.R. § 702.142 (implementing 42 U.S.C. § 1652). The LHWCA defines "widow or widower" to include "only the decedent's wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time." 33 U.S.C. § 902(16). Neither the LHWCA nor Longshore regulations define "husband" or "wife."

**Definitions of "widow," "widower," "husband," and "wife" post-*Windsor*.**

In accordance with *Windsor*, the LHWCA terms "widow," "widower," "husband," and "wife" shall include any individuals who were, at the time of the employee's death, lawfully married under any state law. This includes individuals married to a person of the same sex who were legally married in a state that recognizes such marriages, but who are domiciled at the time of the employee's death in a state that does not recognize such marriages. These terms shall not include individuals of the same or opposite sex who are in a formal relationship that is recognized by a state, but is not denominated as marriage under state law – e.g., a domestic partnership or civil union – even if the individuals have the same rights and responsibilities under state law as those who are married. For purposes of this bulletin, "state" means any state, territory, or possession of the United States, or any foreign jurisdiction, that has the legal authority to sanction marriages.

The text of the LHWCA permits a gender-neutral construction of "widow," "widower," "husband," and "wife." Adopting such a construction avoids serious constitutional questions about the constitutionality of federal laws that confer marriage benefits and burdens only on opposite-sex married couples. It is a well-established principle of statutory interpretation

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<sup>1</sup> This Bulletin also applies to claims filed under the Longshore Act extensions, *i.e.*, the Defense Base Act, 42 U.S.C. §§ 1651-1655, the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333, and the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. § 1871.

that, "where an otherwise acceptable construction of a statute would raise constitutional problems," the statute should be construed "to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 576 (1988). In *Windsor*, the Court rejected the creation of "second-class marriages for purposes of federal law," finding that Section 3 of DOMA "undermines both the public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition." 133 S. Ct. at 2694. Based on *Windsor*, there is a serious question about whether denying compensation under the LHWCA for otherwise validly-married same-sex couples, while providing compensation for opposite-sex couples, would violate "basic due process and equal protection principles applicable to the Federal Government." *Id.* at 2693.

**Purpose:** To clarify the legal standard that Division of Longshore and Harbor Workers' Compensation (DLHWC) District Offices apply in deciding whether an individual is a "widow or widower," "surviving wife or husband," or "surviving spouse" under the LHWCA and its extensions.

**Applicability:** All DLHWC Federal Staff

**Actions:** If an individual seeks compensation as a widow, widower, or surviving husband or wife of a deceased employee under the LHWCA or its extensions, those terms will be read to include an individual who was, at the time of the employee's death, lawfully married to that employee under any state law. This includes married individuals of the same sex who were legally married in a state that recognizes such marriages, even if the state in which the individual or deceased employee was domiciled at the time of the employee's death does not recognize such marriages.

**Disposition:** This bulletin is to be retained until the DLWHC Procedure Manual, Chapter 3-302 has been updated.

Please contact the National Office if any questions arise in following this guidance. DLHWC Branch Chief for Policies, Regulations, and Procedures, Jennifer Valdivieso at (904) 366-0246, and the Assistant Branch Chief, Linda Aguilar at (202) 354-9638, are available to provide assistance.



Antonio A. Rios  
Director, Division of  
Longshore and Harbor Workers' Compensation