Legal Issues Associated with Extending Benefits to Military Personnel with Same Sex Partners

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A quick history

• Don’t Ask Don’t Tell repealed on September 20, 2011.

Servicemembers able to serve openly without fear of career reprisal.
Denial of death Benefits to same-sex spouse

- CW2 Morgan
- New Hampshire Army National Guard
- Operation New Dawn
- Died on 2/10/2013
- Married in New Hampshire
- Wife Karen ineligible to receive Military or Veterans death benefits.
- Child Casey Elena legal dependent and covered by Morgan’s benefits.
Death notifications

- SSG Johnson
- North Carolina Army National Guard
- Operation Enduring Freedom– Afghanistan
- Killed by suicide bomber on 10/1/12
- Married in Washington DC to Tracy Dice.
- Dice was not notified of her death.
- Denied ability to transport remains.
- Ineligible for return of personal effects including wedding ring.
Base Privileges and Access

- Angela Broadway
- Wife of LTC Heather Mack
- Denied membership to Association of Bragg Officers’ Spouses.
- Unable to secure a base ID.
- Unable to access MWR, commissary, or other base sponsored events.
- No relocation assistance after spouse PCS.
Secretary Panetta’s February Memorandum

- Benefits Service-members can direct.
- Benefits the directive provided.
- Benefits the directive cannot provide currently.
Military personnel can now directly:

- Service Members Group Life Insurance Beneficiary
- Post Vietnam-Era Veterans Assistance Program Beneficiary
- All-Volunteer Force Educational Assistance Program—Active Duty Death benefit
- Death Gratuity Beneficiary
- Final Settlement of Accounts Beneficiary
- Wounded Warrior Designated Caregiver
- Thrift Savings Plan Beneficiary
- Casualty Notification
- Eligibility to be an Escort for Deceased or Missing Members
- Designation of Person having interest in status of a missing member
- Travel and Transport Allowance
  - Attendance at Yellow Ribbon Reintegration Events
  - Transportation of designated individuals incident to hospitalization of members for treatment of wounds, illnesses, injury
Directed military benefits

- Designation of Persons Authorized to Direct Disposition of Remains
- Transportation for Survivors of Deceased Member to attend the member’s burial or memorial service
- Presentation of Flag of the United States
- Hospital Visitation Privileges
- Membership in Family Readiness Group.
Military benefits extended

- Dependent ID cards
- Commissary Privileges
- Exchange Privileges
- Morale, Welfare and Recreation Programs
- Surveys of Military Families
- Quadrennial Quality of Life Review
- Emergency Leave
- Emergency Leave of Absence
- Youth Sponsorship Program
- Youth Programs
- Family Center Programs
- Space Available Travel on DOD Aircraft
- Child Care
- Sexual Assault Counseling Program
- Joint Duty Assignments
- Exemption from Hostile-Fire Areas
- Transportation to and from certain places of employment and on military installations
- Transportation to and from primary and secondary school for minor dependents
- Authority of Service Secretary to Transport Remains of Dependent
- Disability and Death Compensations: Dependents of Members Held as Captives
- Payments to Missing persons
- Legal Assistance
Benefits not extended

• Ability to add spouse as dependent on health care
• Access to on-base housing and housing allowance increases based on dependents.
• Veterans Affairs
• Social Security
Implementation timeline

• Not currently in effect.
• By August 31, 2013 but no later than October 1, 2013.
Proposed declaration of domestic partnership

Printed Name of Service Member

Last Name  First Name  MI
Social Security Number

Signature of Service Member/Grade/Service  Date Signed

Printed Name of Domestic Partner

Last Name  First Name  MI
Social Security Number

Date Signed
Military specific issues

• Security Clearances
• Notification of command
  – Could impact climate.
Impact on RDP status in California

• California Family Code 297 states:
• Two adults in an intimate and committed relationship.
• Must file a Declaration of Domestic Partnership with Secretary of State.
• At the time of filing must meet all of the requirements:
  – Not married to or in a registered domestic partnership of another.
  – Not related by blood in a way that would prevent marriage.
  – At least 18 years old.
Defense of Marriage Act

• Passed by Congress in 1996.
• Defines marriage as a marriage between one man and one woman.
• Spouse is to refer only to an opposite sex partner.
• Explicitly allows states the option of refusing to recognize the lawful actions of a sister state.
DOMA before the Supreme Court

• United States v. Windsor
• (1) Whether Section 3 of the Defense of Marriage Act (DOMA) violates the Fifth Amendment's guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State;
• (2) whether the Executive Branch’s agreement with the court below that DOMA is unconstitutional deprives this Court of jurisdiction to decide this case;
• and (3) whether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case.
DOD’s position on DOMA

• “In the event that the Defense of Marriage Act is no longer applicable to the Department of Defense, it will be the policy of the Department to construe the words “spouse” and “marriage” without regard to sexual orientation, and married couples, irrespective of sexual orientation, and their dependents, will be granted full military benefits.”
What happens next

• The 20 State solution
  – Elevate the 10 states that have granted civil unions/RDP to their citizens to Marriage.

• Marriage in states that recognize Marriage
  – Servicemembers married in nine states and the District of Columbia would be Married for Federal purposes.
States with Marriage Equality

- Massachusetts
- Maine
- Vermont
- New Hampshire
- Connecticut
- New York
- Maryland
- Iowa
- Washington
- District of Columbia
States with RDP/Civil Unions

- Rhode Island
- Delaware
- Illinois
- Hawaii
- New Jersey
- Nevada
- Oregon
- New Mexico
- Colorado
- California
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