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U.S. Supreme Court to Take Up Same-Sex Marriage Case During Upcoming Term

On January 16, the U.S. Supreme Court announced that it will hear four cases on same-sex marriage. The Court said it will rule both on the constitutionality of same-sex marriage bans and states' power to refuse to recognize such marriages performed in other states.

The Supreme Court will focus its review on a November decision from the Sixth Circuit Court of Appeals, which became the first federal appeals court to uphold same-sex marriage and marriage-recognition bans in the states under its jurisdiction. The Sixth Circuit's decision reversed the decisions of trial courts in Kentucky, Michigan, Ohio, and Tennessee striking down such bans. The main rationale for the Sixth Circuit's decision was that the regulation of marriage, including the decision whether to extend marriage to same-sex couples, should be left to individual state legislative and elective processes. The decision broke ranks with other federal appeals courts that had all previously struck down state laws that banned same-sex marriage. This created a split among the circuits that likely influenced the Supreme Court's decision to address the issue.

Oral arguments will likely take place during the Supreme Court's April sitting, and a final ruling will come toward the very end of the Court's term, likely in late June. Until the Court weighs in on this issue, employers should follow the status quo in their states, a task that is easier said than done. Same-sex marriages are currently allowed in 36 states. However, even in the 14 states with state same-sex marriage bans, employers still must provide certain federal benefits and leave rights, including under the Family and Medical Leave Act, to employees who have been legally married in one of the states that already recognize same-sex marriage, or one of the states where federal courts have struck down same-sex marriage bans.

For more information on this issue, please contact [David A. Skidmore](#), or any other member of Frost Brown Todd's [Labor and Employment Practice Group](#).

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