

July, 2018
Summer 2018 Edition



Newsletter—Summer Edition

What the Supreme Court’s decision in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* means for you

By Briton S. Collins, Esq.

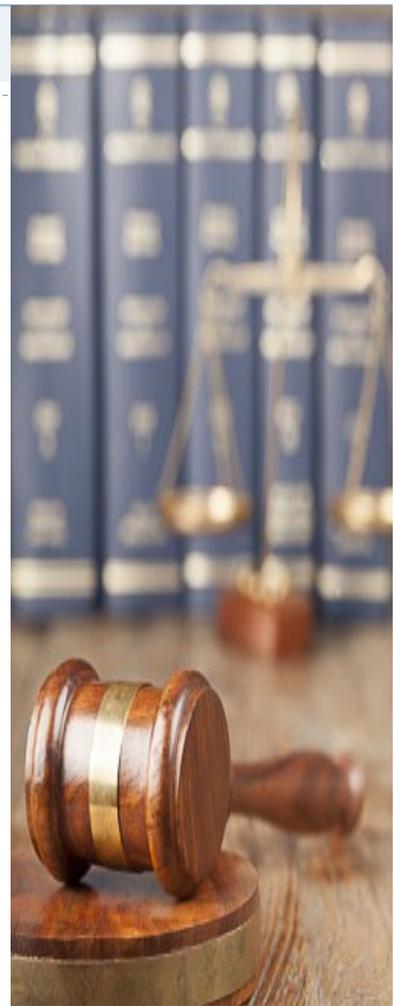
Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission was one of the most anticipated legal decisions surrounding same-sex marriage since the landmark case of *Obergefell v. Hodges*. It pitted a Colorado baker who refused to bake wedding cakes for same-sex couples against a same-sex couple who claimed that the baker’s refusal constituted illegal discrimination under the Colorado Anti-Discrimination Act (the “CADA”). First Amendment advocates championed the case as an opportunity for the Supreme Court to protect free speech and religious freedom by allowing those with sincerely held religious beliefs to refuse to provide goods or services to same-sex couples. Civil rights advocates championed it as an opportunity for the Supreme Court to impose a nationwide ban on businesses refusing to provide goods or services to same-sex couples. What we got was neither.

The Supreme Court sided with the baker on purely procedural grounds. It ruled that the Colorado Civil Rights Commission (the “Commission”) had violated the baker’s rights by unfairly tilting the trial against him and his claims of religious liberty. This was due primarily to the overtly antagonistic questions and comments from the commissioners during the trial, which the court ruled was inconsistent with Colorado’s obligation of religious neutrality. The court invalidated the Commission’s order finding the baker in violation of the CADA, but it did so without diving into the substantive questions that first thrust the case into the national spotlight.

So what does this mean for you? Nothing.

Fox News will tell you that businesses may now legally refuse to provide goods or services to same-sex couples on religious grounds. CNN will tell you that businesses are now required to provide goods or services to same-sex couples despite sincerely held religious beliefs against same-sex marriage. The truth is that the Supreme Court said neither of these things and did nothing to clarify the law for business owners. Instead, it found an escape hatch that allowed it to solve a narrow problem (the baker’s plight), while avoiding establishing a nationwide standard that would cause political upheaval.

The answer to this legal conundrum remains to be seen, but the best guidance for the time being may be the following quote from the opinion’s closing line: “The outcome of cases like this in other circumstances must await further elaboration in the courts, all in the context of recognizing that these disputes must be resolved with tolerance, without undue disrespect to sincere religious beliefs, and without subjecting gay persons to indignities when they seek goods and services in an open market.”



INSIDE THIS ISSUE

Supreme Court ruling	1
The Employer Mandate	2
Attorney Spotlight	2
Beneficiary Designation	3

DON’T MISS OUT! BOOK NOW!

Seminar

Topic: *Beneficiary Designations*

The Good, The Bad & The Ugly

Date: September 21, 2018

Time: 9am—10am

RSVP: On or before Sept 14, 2018

Email: dsmith@kmfpc.com



Seminar on Beneficiary

Designation

The Good, The Bad & The Ugly

Date: September 21, 2018

Time: 9am—10am

RSVP: on or before Sept 14, 2018

Email: dsmith@kmfpc.com



THE EMPLOYER MANDATE TODAY

By Ashley N. Trotto, Esq.

Late December 2017, media outlets were abuzz with news that the Affordable Care Act's Individual Mandate had been repealed. Had he done it? Had President Trump delivered on his promise to repeal Obamacare? Well, not exactly; at least not yet anyway.

Although the Individual Mandate was effectively repealed, the Tax Cuts and Jobs Act ("TCJA") had no effect on the Employer Mandate or its associated reporting requirements.

In fact, the Employer Mandate seems to be thriving. Almost simultaneously with the adoption of the business-friendly TCJA, the Internal Revenue Service ("IRS") began issuing Employer Mandate penalty assessments to large employers for the 2015 calendar year. The largest penalties are for failures under Code 4980H(a) and are based on an employer's failure to offer coverage to the requisite number of full-time employees. For many large employers, this failure results in penalties in the millions.

Although some large employers may have failed to comply with the Employer Mandate, others are receiving assessments due to simple reporting errors. You might be thinking, wait; didn't the IRS waive reporting penalties? It did. Recognizing the challenges faced by employers in complying with reporting requirements, the IRS published guidance providing a waiver of reporting penalties so long as an employer

made a good faith, timely effort to meet its filing requirements. However, that guidance has not hindered the issuance of penalty assessments under Code § 4980H. It is now up to each employer to prove to the IRS that alleged failures were solely due to incomplete or incorrect reporting and did not result from substantive Employer Mandate failures.

That being said, the ultimate fate of the Employer Mandate remains tentative. The Individual and Employer Mandates are somewhat intertwined. The Individual Mandate was adopted, in part, to increase the number of healthy individuals in the insurance marketplace, with the idea that the healthy could subsidize the sick. If healthy individuals are now permitted to opt-out of coverage without penalty, employer premiums are likely to spike which may create an unsustainable system. Because the mandates were intended to support one another, there are some strong opinions in the employee benefits community that, following effective repeal of the Individual Mandate, repeal of the Employer Mandate is not far behind.

Stay tuned, things are bound to change! Until then, do your best to stay on top of Employer Mandate compliance, including the collectively dreaded employer reporting.

BENEFICIARY DESIGNATION

By Michael R. Crowder, Esq.

Imagine you receive a call from the nephew of a participant in your retirement plan. He says that his elderly aunt wishes to change her beneficiary designation via telephone. You check the aunt's file: she is widowed, and her current beneficiaries are her three children, equally. It looks like the children all live out of town. The nephew puts his aunt on the phone. You recognize her voice, and though she does sound a little weak, confirms that she wishes to change her beneficiary designation to leave her entire death benefit to her nephew. "He's been taking care of me," she explains. What do you do?

We will be covering this hypothetical, and others, at our next no-cost seminar for our clients and friends. Specifically, we will be covering the rules for distributions to beneficiaries after the death of a participant and how beneficiary designations are administered. We'll also share with you some practical tips on how to protect against fraud and undue influence of disabled and elderly participants.

In the Spotlight

Kathy D. Aslinger



What is your primary practice area?

I am an ERISA/employee benefits attorney, which means that I work with employers, pension boards, benefit plan fiduciaries, and plan advisors (CPAs, actuaries, third party administrators, financial advisors, etc.) on all things employee benefits. That can include many different areas, such as advising on every-day benefit or employment issues that may arise, writing retirement or health and welfare plans, assisting with plan compliance and correction, or representing a client before the IRS or DOL as part of an audit or a correction program.

What made you decide to become an ERISA attorney?

I never set out to become an ERISA attorney. When I was in law school, I quickly determined that I wanted to be a prosecutor, and that is the path I pursued after graduation. I started my career as a judicial clerk, working for judges on the Tennessee Court of Appeals and Tennessee Court of Criminal Appeals. I then worked for eight years as a prosecutor – four years handling criminal appeals for the Tennessee Attorney General’s office, and another four years trying cases at the trial court level as an Assistant District Attorney. At that point, I was ready for a new challenge, although I did not know where the path might lead. When the opportunity presented itself, I took a flying leap of faith and accepted a position at Kennerly Montgomery, unsure of whether I could really learn and excel at another area of law after so many years as a criminal attorney. Luckily for me, that decision turned out to be one of the best decisions I have ever made. My now-law partner (or fellow shareholder, to be technical), Bill Mason, introduced me to the complex world of ERISA and benefits, which I found to be fascinating and well-suited to my skill set, and I haven’t looked back.

Is there anything people would find surprising about your practice?

Probably that it’s fun. People tend to assume that it is technical (which it is), tedious (which it can be), and boring (which it’s not). I once had a local attorney tell me that he would rather eat glass than be an ERISA attorney. What people don’t realize is that some new variation of an employment or benefits issue comes up every day, keeping the questions interesting and my brain engaged in finding new and creative solutions for my clients.

When would an employer need an ERISA attorney?

If a business or governmental entity offers benefits to its employees, at some point it will need the services of an ERISA or employee benefits attorney. The rules governing benefit plans are complex, and employers need experienced advisors to navigate those waters. Often we become involved with a new client when a problem arises. For example, an employer may have made a mistake in calculating contributions to participants in a retirement plan, or it may have forgotten to adopt required plan amendments or timely submit government filings. In those instances, we can help plan sponsors make the necessary corrections to bring the plan back into compliance. Other times, we may be engaged to assist employers in developing and designing new benefit programs. In those instances, we can help explain the compliance requirements on front end, which may reduce correction costs later.

Attorney Spotlight

Fun Facts about Kathy:

“I live in a zoo. Well, not really, although it feels like it sometimes. In addition to my husband and 12-year-old daughter, I live with three cats and two Australian shepherds. I’ve given up on trying to leave the house without extra fur and a lint brush.”

Areas of Practice:

Pension & Employee Benefits

ERISA Law

Employment law

Local Government and Public Utilities

Memberships:

Tennessee Bar Association

Knoxville Bar Association

Blount County Bar Association

East Tennessee Compensation and Benefits Association

Kennerly, Montgomery

& Finley, PC

550 Main Street W, 4th Floor,

Knoxville, TN, 37902

865 546 7311