



Name of Country and Jurisdiction:

**United States (Federal)**

- 1. What forms of legally recognized relationships are available?
  - 2. What are the requirements to be able to enter into the above relationships?
  - 3. Differences between marriage and civil unions and how the two sets of laws interact.
  - 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
  - 5. When a couple comes to the United States, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
  - 6. How can each form of relationship be dissolved? What is the residency requirement or other link to the United States for an authority to grant a divorce/dissolution?
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**Q**

**1. What forms of legally recognized relationships are available?**

**A**

LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage	U.S. and its territories (federal)	Marriages are regulated by the states. Numerous federal laws grant benefits and privileges to couples who are married under state law. See laws for the different states and territories in this Guide under the specific name of the state or territory.	Yes <sup>1</sup>
Civil union or domestic partnership, registered	U.S. and its territories (federal)	Civil unions and domestic partnerships are regulated by the states, with no federal recognition of such status.	Not applicable.
<i>De facto</i> , not registered	U.S. and its territories (federal)	<i>De facto</i> relationships are regulated by the states.	Not applicable.

**Q**

**2. What are the requirements to be able to enter into the above relationships?**

**A**

Requirements to enter into the above relationships are governed by the states. The federal government recognizes same-sex marriages that were legal at the place of celebration. The federal government does not impose any additional requirements to enter into the above relationships and recognizes all couples that are legally married.

No other substantive eligibility criteria must be satisfied.

<sup>1</sup> On June 26, 2015, the United States Supreme Court issued a decision in four consolidated cases from the Sixth Circuit Court of Appeals under the name *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015), regarding same-sex marriage. The appeals arose from federal district court decisions in Michigan, Kentucky, Ohio, and Tennessee, which struck down as unconstitutional laws that denied the 14 petitioners the right to marry or refused to give full recognition to marriages lawfully performed in another state. The laws at issue in those states define marriage as a union between one man and one woman. The Sixth Circuit had reversed those decisions (in *DeBoer v. Snyder*, 772 F.3d 388 (2014)), holding that a state had no constitutional obligation to allow same-sex marriages or to recognize those performed in another state. In a 5-4 majority opinion, the U.S. Supreme Court held that the Fourteenth Amendment requires a state to license marriages between same-sex couples and to recognize lawfully performed same-sex marriages from another state. The Court held that the right to marry is protected under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Because the Court found that state laws at issue burden the liberty and abridge the equality of same-sex couples, they must be struck down.

**Q**

**3. If both marriage and civil unions exist:**

**A**

(a) Identify any significant differences in eligibility.	Differences are at the state level; the federal government does not impose eligibility requirements for marriage or civil unions.
(b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).	Eligibility and interactions are dictated by the states.
(c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).	According to the U.S. Government Accountability Office (GAO), marriage offers 1,138 federal benefits and responsibilities, not including hundreds more offered by every state. These benefits are not offered to couples in civil unions or domestic partnerships. The benefits and responsibilities span a wide range of areas, including taxes, immigration, Social Security, family medical leave, employee benefits, and continued health coverage, among others.

With respect to (c), several major differences are identified below:

Tax	<p>According to the GAO report, as of 1997 there were 179 tax provisions that took marital status into account. Examples include the following:</p> <ul style="list-style-type: none"> <li>• Employer-provided health benefits are taxed as income for nonmarried same-sex couples (i.e., civil unions and domestic partnerships);</li> <li>• Eligibility for the earned income tax credit (EITC) is based in part upon the number of “qualifying children” in the taxpayer’s household. The definition of “qualifying child” under this provision includes only a child who is the taxpayer’s: (a) biological child or descendant; (b) stepchild; or (c) adopted child. Some states have prohibited same-sex partners from adopting children. However, after the <i>Obergefell</i> decision, holding that prohibition of same-sex marriage violated the Constitution, the adoption laws of the particular state or territory should be reviewed for any changes going forward.</li> <li>• Internal Revenue Code § 2056 exempts amounts transferred to a surviving spouse from the decedant’s taxable estate.</li> </ul>
Family and Medical Leave Act	The Family and Medical Leave Act (FMLA) guarantees family and medical leave to employees to care for parents, children, or spouses. As currently interpreted, this law does not provide leave to care for a domestic partner or the domestic partner’s family member.
Immigration	Currently, U.S. immigration allows lesbian and gay citizens or permanent residents to petition for their same-sex partners to immigrate if they are legally married, but not if they are not married (i.e., in civil unions or domestic partnerships).

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Social Security	Surviving spouses of working Americans are eligible to receive Social Security payments. A surviving spouse caring for a deceased employee's minor child is eligible for an additional support payment. Surviving-spouse and surviving-parent benefits are available to gay and lesbian Americans who are married, but as of the date of the application for Social Security, the spouse/wage earner on whose record benefits are being sought must be domiciled in a state or foreign country that recognizes marriage to a spouse of the same sex or in Washington, D.C. If the spouse/wage earner is domiciled in a foreign country, the courts of the District of Columbia must recognize the foreign marriage as valid. Individuals in domestic partnerships or in civil unions are not eligible for Social Security benefits.
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**4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?**

**A**

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	State by state. Generally, if you are already married, you cannot marry again. The federal government recognizes same-sex couples that are legally married.
Civil union	State by state.
<i>De facto</i>	State by state.

**Q**

**5. When a couple comes to the United States, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?**

**A**

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	For federal purposes, a pre-existing marriage is recognized if it was recognized in the country where the marriage occurred.
Civil union	State by state. States may recognize foreign same-sex relationships that were entered into legally in another state or country.





**6. How can each form of relationship be dissolved? What is the residency requirement or other link to the United States for an authority to grant a divorce/dissolution?**



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	Requirements for dissolving a marriage vary by state.
Civil union	Requirements for dissolving a civil union or domestic partnership vary by state. See above.

**Sources:**

- *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015).
- Antonio D'Aloia, Chapter 3 – From Gay Rights to Same-Sex Marriage: A Brief History Through the Jurisprudence of US Federal Courts.
- <http://www.hrc.org/resources/entry/an-overview-of-federal-rights-and-protections-granted-to-married-couples/>.
- <http://www.glad.org/uploads/docs/publications/social-security-benefits-and-doma.pdf/>.
- <http://www.ssa.gov/people/same-sex-couples/>.