

DOL Updates FMLA's Definition of Spouse: Extending Coverage to Eligible Employees in Same-Sex Marriages

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On February 23, 2015, the U.S. Department of Labor (DOL) announced that it will issue a Final Rule revising the regulatory definition of "spouse" under the Family and Medical Leave Act of 1993 (FMLA). The new definition of spouse will provide workers in legal, same-sex marriages, regardless of the state in which they reside, the same federal job-protected leave rights as those covered workers in opposite-sex marriages. The DOL's rule change follows the U.S. Supreme Court's precedent setting decision, in *United States v. Windsor*, striking the federal Defense of Marriage Act provision that interpreted "marriage" and "spouse" to be limited to opposite-sex marriage for the purposes of federal law. The DOL's Final Rule will be issued in the Federal Register on February 25, 2015 and is effective March 27, 2015.

The FMLA provides that eligible employees of covered employers may take unpaid, job-protected leave for specified family and medical reasons, as well as certain military family leave. Covered employees are, for example, entitled to take FMLA leave to care for a spouse who has a serious health condition.

Previously, the FMLA's regulatory definition of "spouse" did not include same-sex spouses if an employee resided in a state that did not recognize the employee's same-sex marriage. The new rule changes the definition of spouse from a "state of residence" rule to a "place of celebration" rule, thereby looking to the law of the place in which the marriage was entered into, as opposed to the law of the state in which the employee resides. The Final Rule's definition of spouse also expressly includes individuals in lawfully recognized same-sex and common law marriages and marriages that were validly entered into outside of the United States if they could have been entered into in at least one state.

The DOL's new regulatory definition of spouse does not substantively alter the FMLA. It does not change, for example, eligibility requirements, an employee's entitlement to determinate amounts of leave, or the types of covered employers.

The full text of the Final Rule can be found at <http://www.dol.gov/whd/fmla/spouse/>.

For additional information on the FMLA, please visit www.dol.gov/whd/fmla.

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