



FMLA Leave Coverage Extends to All Same-Sex Spouses

Mar 11, 2015

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Beginning March 27, 2015, all legally married same-sex couples will be eligible for leave under the Family and Medical Leave Act ("FMLA").

Departing from the "state of residence" rule it adopted in August 2013 in the wake of the Supreme Court's decision in *United States v. Windsor* (which struck down the definition of "spouse" in the Defense of Marriage Act as a person of the opposite sex), the Department of Labor issued a Final Rule on February 25, 2015, adopting a "state of celebration" rule.

The new "state of celebration" rule defines a spouse to include individuals in lawfully recognized same-sex, common law marriages, and marriages that were validly entered into outside of the U.S. if they could have been entered into in at least one state. Once the new rule takes effect on March 27, 2015, all legally married couples – whether opposite-sex, same-sex, or married under common law – will have consistent FMLA rights regardless of their state of residence.

Additionally, the new definition permits an eligible employee in a legal same-sex or common law marriage to take FMLA leave to care for his or her step-child or step-parent, regardless of whether the employee has any legal parental relationship to the step-child or the step-parent has any legal parental relationship to the employee.

Employers should note that civil unions are not considered marriages under the FMLA. Consequently, employees in civil unions are not guaranteed FMLA leave to care for a spouse; however an employer may offer employment benefits that provide greater family or medical leave rights than the FMLA, including offering leave to employees in civil unions.

As before, employers are permitted to require proof of a valid marriage when an employee is requesting FMLA leave. If an employer requests such documentation, it is advised that they do

so in a non-discriminatory manner, requiring all employees requesting spousal leave to provide the same documentation.

In light of the FMLA's new definition of spouse, employers are advised to review their FMLA policies for compliance. In addition, because this new definition applies only to the FMLA and state laws may not afford the same type of leave benefits to same-sex spouses, employers are also advised to evaluate all other leave policies to ensure that they are properly administered in conjunction with the both the FMLA and all state laws.

For additional information and inquiries about your company's leave policies, please contact [Amy Wilson](#), [Catherine Burgett](#), [Anne McNab](#), or any other attorney in Frost Brown Todd's [Labor and Employment Practice Group](#).

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