

EMPLOYER ALERT: DOL Issues Final Rule Changing Definition of “Spouse” Under the FMLA

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On February 23, 2015, the United States Department of Labor announced that a final rule revising the regulatory definition of “spouse” under the Family and Medical Leave Act of 1993 (FMLA).

The Department has moved from a “state of residence” rule to a “place of celebration” rule for the definition of spouse under the FMLA regulations. The Final Rule changes the regulatory definition of spouse in 29 CFR §§ 825.102 and 825.122(b) to look 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. A place of celebration rule allows all legally married couples, whether opposite-sex or same-sex, or married under common law, to have consistent federal family leave rights regardless of where they live. 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 definitional change means that eligible employees, regardless of where they live, will be able to:

- take FMLA leave to care for their lawfully married same-sex spouse with a serious health condition,
- take qualifying exigency leave due to their lawfully married same-sex spouse’s covered military service, or
- take military caregiver leave for their lawfully married same-sex spouse.
- to take FMLA leave to care for their stepchild (child of employee’s same-sex spouse) regardless of whether the in loco parentis requirement of providing day-to-day care or financial support for the child is met.

- to take FMLA leave to care for a stepparent who is a same-sex spouse of the employee's parent, regardless of whether the stepparent ever stood in loco parentis to the employee.

The full text of the Final Rule can be found on the Department of Labor Website. The effective date for the final rule is March 27, 2015.

Employer Lessons: Employers must immediately review and evaluate any work rules, handbooks, or policies related to FMLA to ensure they have updated definitions of a "spouse" as defined by the Final Rule. Employers must also familiarize themselves with the states that authorize same sex marriage. In conducting this review, Sandberg Phoenix's Labor and Employment Law Team can assist in adding or modifying current language to ensure their policy protects their business interests.

For more information on the Family Medical Leave Act, see our full archive of FMLA blog entries.