



Final Rule Will Extend FMLA Protections to All Eligible Employees in Same-Sex Marriages

Effective March 27, 2015, a [final rule](#) from the U.S. Department of Labor (DOL) will extend the protections of the federal Family and Medical Leave Act (FMLA) to all eligible employees in legal same-sex marriages, **regardless of where they live.**

Background

Under the FMLA, an [eligible employee](#) of a covered employer (**50 or more employees** in at least 20 workweeks in the current or preceding calendar year) is entitled to take unpaid, job-protected leave for specified family and medical reasons, including to care for the employee's spouse who has a serious health condition.



The U.S. Supreme Court's decision in *United States v. Windsor* struck down the federal Defense of Marriage Act provision that interpreted "marriage" and "spouse" to be limited to opposite-sex marriage for purposes of federal law. In response, the DOL revised its agency guidance, effective as of June 26, 2013, to clarify the definition of "spouse," for purposes of the FMLA, to mean a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including "common law" marriage and same-sex marriage.

Final Rule

The final rule significantly changes previous FMLA guidance by defining "spouse" **based on the law of the place where the marriage was entered into**, sometimes referred to as the "place of celebration" (currently, the FMLA regulatory definition of "spouse" only applies to same-sex spouses who reside in a state that recognizes same-sex marriage, referred to as the "state of residence" rule). This new definition of "spouse" expressly includes individuals in lawfully recognized same-sex and common law marriages, as well as same-sex marriages entered into abroad that 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;
- Take military caregiver leave for their lawfully married same-sex spouse; or

- Take FMLA leave to care for their stepchild (child of the employee's same-sex spouse) or stepparent who is a same-sex spouse of the employee's parent, even if certain [in loco parentis](#) requirements are not met.

More information is available on the DOL's [FMLA Final Rule Website](#), which includes links to the DOL's fact sheet and frequently asked questions.

To learn more about the eligibility requirements and qualifying reasons for FMLA leave, visit the [Family and Medical Leave Act](#) section of your online HR library.

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