

## Same-Sex Married Couples Have Equal Rights to FMLA Leave Regardless of Their Residence

The U.S. Department of Labor (DOL) issued a Final Rule revising the regulatory definition of "spouse" under the Family and Medical Leave Act (FMLA) to ensure that same-sex married couples receive the rights and protections under the FMLA without regard to where they reside. The new definition was effective March 27, 2015.

The former FMLA regulations used the "place of residence" rule, which followed the law of the state where the employee resided to determine whether or not an employee had a spouse. Accordingly, same-sex married employees who resided in a state that did not recognize same-sex marriages, even though they were legally married elsewhere, were not permitted to take FMLA to care for their spouse.

The new regulatory definition utilizes the "**place of celebration**" rule for the definition of spouse. So, employers should look to the law of the state or country where the marriage was entered into, as opposed to the law of the state in which the employee resides. This new regulation allows all couples who were legally married in any state or country, whether to an opposite-sex or same-sex partner or married under common law, to have consistent rights under the FMLA regardless of where they live.

While the change means that more employees are entitled to FMLA leave to care for their spouse, it eases the administrative burden the old rule imposed on employers who operate in more than one state because they can now apply the same eligibility standard for married couples nationwide.

Employers should note that by adopting the new definition of "spouse," the DOL did not expand it to include domestic partners. Only employees who are legally married are afforded the right to take leave for their partners under the FMLA.

Employers should review their FMLA policies to conform to the new regulation. Instead of using the terms "husband" and "wife" use the term "spouse." Instead of using the terms "mother" and "father", use the term "parent."

If an employee is requesting leave to care for a family member, an employer may still require reasonable documentation to confirm a family relationship; "documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc." An employer should not require documentation for some employees and not others.

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