

FMLA: "Spouse" Definition Expanded to Include Out-of-State Same-Sex Marriages Under Proposed DOL Rule

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Practice Area: Health Industry Labor, Employment and Immigration & Labor and Employment

On June 20, 2014, the Department of Labor issued a proposed rule that would extend Family and Medical Leave Act ("FMLA") protections to eligible employees in legal same-sex marriages, regardless of where the employees live. The proposed rule would change the FMLA regulatory definition of "spouse" so that it applies to an employee legally married in a state (the state of celebration) which is different from the state in which the employee resides (the state of residence).

Under the proposed rule, employers in states that do not recognize same-sex marriage must provide FMLA leave to qualifying employees who have entered into a same-sex marriage in a state where their union is permitted. For example, a same-sex couple that resides in North Dakota, a state which does not presently permit same-sex marriage, could travel to Minnesota and get married. Once the couple returns to North Dakota, an employer that is covered under the FMLA will be required to provide leave to a qualifying employee to care for his or her same-sex spouse, or covered family members of that spouse.

The proposed rule will affect covered Wisconsin employers because Wisconsin presently does not recognize same-sex marriage, with the exception of those marriages that were conducted between June 6 and June 13, 2014. Thus, Wisconsin employers will be required to provide leave under the federal FMLA, in addition to the Wisconsin FMLA, which already recognizes domestic partnerships under the state law's leave provisions.

As stated, this rule is only a "proposed" rule at this point. The rule will be published in the Federal Register shortly, after which the public comment period will begin. Once the public comment period has concluded, the Department of Labor will make a final determination regarding adoption of the proposed rule. We will continue to monitor the proposed rule with respect to its progress.

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