

Labor Dept. Proposes to Extend FMLA Protections To Eligible Employees In Same-Sex Marriages

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A rule proposed by the U.S. Department of Labor would extend the protections of the Family and Medical Leave Act (FMLA) to all eligible employees in legal same-sex marriages regardless of where they live. The FMLA allows eligible employees to take protected unpaid leave for specific family and medical reasons.

A Department of Labor press release indicated that Secretary Thomas Perez proposed this rule in light of the U.S. Supreme Court's decision in *United States v. Windsor*, in which the court struck down the Defense of Marriage Act provision that interpreted "marriage" and "spouse" to be limited to opposite-sex marriage for the purposes of federal law.

The rule would change the FMLA definition of "spouse" so that an eligible employee in a legal same-sex marriage will be able to take FMLA leave for his or her spouse or family member regardless of the state in which the employee resides. This is in contrast to the current definition of "spouse" – which only applies to same-sex spouses who reside in a state that recognizes same-sex marriage. As such, the new rule would create FMLA eligibility based on the law of the place *where the marriage was entered into*. The Department of Labor indicated that the purpose behind this new rule is to allow all legally married couples, whether opposite-sex or same-sex, to have consistent federal family leave rights regardless whether the state in which they currently reside recognizes such marriages.

While the rule has only been proposed, all employers should revisit their FMLA policies and ensure that they are up to date and are ready to be revised to adapt to this rule when it is implemented.

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