

Equal FMLA Rights For Workers With Legal Same Sex Marriages

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Under a new Department of Labor regulation, employees who are in legal same-sex marriages are now able to take protected leave under the Family and Medical Leave Act (FMLA) to care for a seriously ill spouse, even if the state they live in does not recognize same-sex marriages.

The FMLA allows eligible employees to take protected unpaid leave for specific family and medical reasons. Prior to this rule, married same-sex couples could be considered "spouses" under the FMLA only if they resided in a state that recognized same-sex marriages. The inclusion of all legally same-sex married couples in the definition of "spouse" will provide protected leave to care for a seriously ill spouse as well as to care for a step-child, a step-parent, and leaves for family members serving in the military, presuming other statutory requirements for such leaves are met.

This is the first time the Department of Labor has specifically stated that it will apply the FMLA to same-sex marriages anywhere. The new rule creates 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 and not have to choose between the job and income they need, and caring for a loved one, which is the premise behind the FMLA.

The rule is slated to go into effect on Friday March 27, 2015. Employers in all states should revise their FMLA policies and ensure to implement the new rule by providing FMLA benefits to employees who are in legal same-sex marriages.

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