

United States Department of Labor Extends Rights Under the Family and Medical Leave Act to Eligible Workers in Legal Same-Sex Marriages

On February 25, 2015, the U.S. Department of Labor's Wage and Hour Division issued a Final Rule amending the regulatory definition of "spouse" under the Family and Medical Leave Act (FMLA) in light of the United States Supreme Court's decision in *United States v. Windsor*, which struck down as unconstitutional the federal Defense of Marriage Act provision that interpreted the terms "marriage" and "spouse" to be limited to opposite-sex marriage for the purposes of federal law. See 133 S. Ct. 2675 (2013).

The Final Rule amends the regulatory definition of "spouse" under the FMLA to allow eligible employees in legal same-sex marriages to take FMLA leave to care for their spouse or family member, regardless of where they live. The prior definition of "spouse" did not include same-sex spouses if the employee resided in a state that did not recognize the employee's same-sex marriage. Under the new rule, eligibility for FMLA protections is determined by the law of the place where the marriage was entered into, the "place of celebration," rather than the state where the employee resides.

The Final Rule revises the definition of spouse in 29 CFR § 825.102 to read as follows:

Spouse, as defined in the statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

- (1) Was entered into in a State that recognizes such marriages; or
- (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for certain specified family and medical reasons. Covered employers should review their existing policies to ensure that they comply with the new regulatory definition. The Final Rule will be effective on March 27, 2015.

Currently, 37 U.S. States plus the District of Columbia recognize same-sex marriages and issue marriage licenses to same-sex couples. This area of the law is rapidly evolving. If you have questions about specific situations or areas of application, you should contact an attorney.

HOW THE OSBORN MALEDON EMPLOYMENT TEAM CAN HELP

If you or your organization would like more information on compliance with the new law, please contact:

Scott Rodgers	(602) 640-9344	srodgers@omlaw.com
John Blanchard	(602) 640-9304	jblanchard@omlaw.com
Ronda Fisk	(602) 640-9363	rfisk@omlaw.com
Kristin Windtberg	(602) 640-9367	kwindtberg@omlaw.com