

DOL Extends FMLA Rights to Same-Sex Couples Nationwide

February 26, 2015

After the Supreme Court's landmark 2013 ruling in *United States v. Windsor* found section 3 of the Defense of Marriage Act to be unconstitutional, there was significant uncertainty regarding an employer's obligations under various federal employment laws as they relate to employees in same-sex marriages. On February 25, 2015, the Department of Labor went a long way to clarifying an employer's obligations—as least under the Family and Medical Leave Act ("FMLA").

Under the FMLA, eligible employees are entitled to take 12-weeks of unpaid, job-protected leave for covered family and medical reasons, including to care for a "spouse" with a serious health condition. Prior to today, the regulations defined "spouse" under a "state of residence" rule, which meant that only same-sex spouses residing in a state that recognized same-sex marriage were entitled to take spousal leave under the FMLA.

In the [Final Rule](#) published just yesterday, the DOL has amended the definition of "spouse" to expressly reference same-sex marriages and common law marriages entered into in any state that recognizes such marriages. The definition also encompasses same-sex marriages entered into abroad that could have been entered into in any US state. Under the new definition, same-sex spouses can avail themselves of the FMLA's protections, regardless of the law of the state in which they currently reside.

The Final Rule will take effect on March 27. Employers should take this time to update their policies and practices and ensure that individuals tasked with enforcing the FMLA are aware of this pending change.