

DOL Issues Final Rule revising the definition of “spouse” under the FMLA

On February 25, 2015, the Department of Labor issued a Final Rule revising the regulatory definition of “spouse” under the FMLA. The DOL moved from a “state of residence” rule to a “place of celebration” rule, which looks to the law of the place in which the marriage was entered into, as opposed to the law of the state in which the employee resides. The new rule, effective March 27, 2015, revises 18 C.F.R. §§825.102 and 825.122(b) 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.”

This change is particularly relevant for states that do not otherwise recognize same-sex marriages or for states where the law has recently changed. As long as the employee was formally married in a state or a foreign country that recognizes same-sex marriage, he or she is considered a “spouse” under the FMLA. The new definition also includes a husband or wife in a common law marriage that became valid in a state that recognizes the marriage.

The rule change does not affect any other substantive provisions of the FMLA such as which employers are covered or how employees become eligible for leave. It also does not affect the already existing rule that employees are entitled to take leave to care for the child of their same-sex partner (married or unmarried) or unmarried opposite-sex partner provided that the employee provides day-to-day care or financial support for the child.

It is important for employers to review their FMLA policies to ensure that all employees who are lawfully married are informed of and receive all available FMLA benefits.

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