

## “Spouse” Redefined by Department of Labor for the FMLA

by James B. Yates and Sarah E. Pawlicki



On February 23, 2015, the Department of Labor announced a rule change to the Family and Medical Leave Act (FMLA) to extend spousal benefits to same-sex married couples so long as the marriage was celebrated in a state that recognizes same-sex marriage. After the U.S. Supreme Court’s decision in *Windsor v. United States* struck down the definition of marriage as a union between one man and one woman, the Department of Labor issued guidance extending same-sex spouses coverage under the FMLA. However, it was unclear whether the couples received FMLA protection if they were legally married in one state but lived or worked in another state that prohibited same-sex marriage. The Department of Labor’s new rule, effective March 27, 2015, clarifies that same-sex couples legally married in one state receive protection under the FMLA in every state.

Under the new FMLA rules, even though Ohio currently maintains a same-sex marriage ban, an Ohio resident may travel to another state, enter into a legal same-sex marriage in that state, return to Ohio and receive the same benefits under the FMLA as other married couples. The marriage must be a legal marriage to be eligible for coverage under the FMLA. Additionally, although employers still can request that employees verify a valid marriage, the requested documentation to satisfy this requirement is minimal. The current regulations, which were not changed, only require “reasonable documentation” the family relationship exists and this may be demonstrated by a “simple statement from the employee.” Individuals that are involved in civil unions or domestic partnerships do not qualify as spouses under the rule but same-sex spouses married abroad will receive FMLA protection so long as at least one state would legally recognize the marriage. Furthermore, same-sex spouses now are eligible to take leave to care for the child of a same-sex spouse. Employees are also eligible to take leave to care for a same-sex stepparent (the same-sex spouse of the employee’s parent).

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Therefore, even though same-sex marriage remains illegal in Ohio, Ohio employers now need to be aware of these new FMLA requirements. FMLA policies should be reviewed and revised. Supervisors and leave coordinators should be trained on the new entitlement for FMLA leave for same-sex married couples.

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