

DOL Confirms FMLA Rights for Same-Sex Married Couples

by Michael Cifelli on September 4, 2013

Roughly two months after the U.S. Supreme Court's historic same-sex marriage decision in *United States v. Windsor*, the U.S. Department of Labor (DOL) has issued regulatory guidance confirming that same-sex married couples are entitled to the leave benefits under the Family and Medical Leave Act (FMLA).

As we previously discussed, *Windsor* struck down the Defense of Marriage Act (DOMA), which defined marriage as between a man and a woman for purposes of federal benefits. Federal agencies have since been adjusting their rules and procedures to reflect the Court's decision.

The new DOL guidance comes in the form of an updated Fact Sheet #28F. It now defines a "spouse" under the FMLA as "a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including 'common law' marriage and same-sex marriage." Accordingly, an employee in a same-sex marriage who was married and resides in a state that recognizes such unions is entitled to up to 12 weeks of leave for specified family and medical reasons, such as to care for a new child or family member with a serious medical condition.

Same-sex marriage is now recognized in Washington, D.C. and 13 states —California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington. For states like New Jersey that do not recognize same-sex marriages, there is currently no obligation to make FMLA spousal leave available. However, private employers are free to create their own leave policies to accommodate employees in same-sex relationships.

If you have any questions about the DOL guidance or would like to discuss your company's leave policies, please contact me, Michael Cifelli, or the Scarinci Hollenbeck attorney with whom you work.