

DOL Grants Leave Rights to Unmarried Partner of Parent

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The Department of Labor issued a clarification this week on the definition of "son or daughter" as it pertains to persons standing *in loco parentis* to a child under certain sections of the Family and Medical Leave Act (FMLA). The guidance, provided by the Wage Hour Division, means FMLA leave will be available to a whole new class of employees.

The FMLA entitles an employee to up to 12 work weeks of leave for the birth or placement of a son or daughter, to bond with a newborn or newly placed son or daughter, or to care for a son or daughter with a serious health condition. The definition of "son or daughter" under the FMLA includes not only a biological or adopted child, but also a "foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*."

The guidance makes it clear that an employee who is the unmarried partner of a parent may be entitled to leave to care for his or her partner's child if the employee stands *in loco parentis* for that child, even where no legal relationship between the employee and the child exists. The guidance also says a person stands *in loco parentis* to a child when that person has put himself in the situation of a "lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption."

Determining Parental Status

While the key to determining an established relationship is found in the intention of the person alleging *in loco parentis* status, the guidance lists several additional factors to consider. They are:

- the age of the child
- the degree to which the child is dependant on the employee
- the amount of support provided by the employee, and
- the extent to which common parenting duties are assumed by the employee.

None of these factors is determinative and each inquiry will be based on its own facts. Further, no biological or legal relationship is required and there is no restriction on the number of "parents" a child may have under the FMLA. The guidance specifically states that "the regulations do not require an employee who intends to assume the responsibilities of a parent to establish that he or she provides both day-to-day care and financial support in order to be found to stand *in loco parentis* to a child."

If an employer questions the establishment of an *in loco parentis* relationship, the employer may request reasonable documentation or a statement of the family relationship. The guidance says, "a simple statement asserting that the requisite family relationship exists is all that is needed in situations such as *in loco parentis* where there is no legal or biological relationship."

Limitations

It is clear that the guidance means a whole new class of employees -- the unmarried partners of a parent of that child, regardless of whether that partner is of the same or opposite sex -- will be eligible for FMLA leave. The guidance only provides leave to care for a child. It does not extend leave rights to employees to care for their unmarried partners. You can find the guidance [here](#).

Questions

If you have questions about this guidance or any other aspect of the FMLA, please contact any member of Warner Norcross & Judd's Labor and Employment Practice Group.