

Department of Labor: Married Same-Sex Couples have FMLA Rights Regardless of State of Residence

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The U.S. Department of Labor (“DOL”) recently announced its Final Rule changing the definition of “spouse” in the Family and Medical Leave Act (“FMLA”) to include most same-sex married couples. The Final Rule becomes effective March 27, 2015.

The changes stem from last year’s Supreme Court decision in *United States v. Windsor*. In *Windsor*, the Supreme Court decision struck Section 3 of the Defense of Marriage Act (defining “marriage” for purposes of federal law as being between one man and one woman). Immediately on the heels of the *Windsor* decision, the DOL clarified the decisions’ effect on the FMLA’s then-current definition of “spouse”: same-sex couples were “spouses” under the FMLA, but only if they resided in a state that recognized same-sex marriage.

On February 23, 2015, however, the DOL announced that it was going one step further by issuing a Final Rule providing for [uniform treatment of same-sex spouses based on their place of celebration instead of the state of residence](#). In other words, if a same-sex couple was validly married in a state that recognizes same-sex marriage, then they are “spouses” for FMLA purposes regardless of where they live in the future. (Same-sex couples who were married *outside* the United States will be considered FMLA “spouses” as long as the marriage was valid in the country of celebration and would be considered valid in at least one U.S. state.)

As a result, after the effective date of March 27, 2015, most same-sex married couples will achieve “spousal” status under the FLMA, which will allow employees to take leave for their same-sex partners’ serious health conditions, for spousal military “qualifying exigency” leave, or for spousal military caregiver leave. It also means that employees will be able to take leave for the serious health condition of the children of their same-sex partners, even if the employee is not acting *in loco parentis* with respect to the child.

This is a simple but significant change in the law, of which all employers should be aware. If you have any questions about the DOL’s new Rule and/or compliance, contact [Andrew Gordon](#) of Hinshaw’s Fort Lauderdale office.

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