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U.S. Department of Labor Revises Family Medical Leave Act Rules to Recognize Same-Sex Spouses Regardless of State of Residence

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Effective March 27, 2015, the U.S. Department of Labor (DOL) regulations under the Family Medical Leave Act (FMLA) will protect an employee's right to take FMLA leave to care for a legally-recognized same-sex spouse regardless of the state where the employee or the employer resides. The FMLA generally allows covered employees to take twelve weeks per year of unpaid leave to care for illness or injury for themselves or certain family members, including spouses. The new regulations effectively expand FMLA coverage to employees with same-sex spouses who live in states that do not recognize same-sex marriages.

For the past twenty years, DOL regulations have defined the term "spouse" for FMLA purposes 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 in States where it is recognized," also called a "state of residence" rule. In 1996, however, one year after the DOL established this definition, Congress enacted the Defense of Marriage Act (DOMA), which required the term "spouse" to be defined as "a person of the opposite sex who is a husband or a wife" for purposes of all federal laws. While the DOL did not change its regulatory language to reflect the DOMA definition, the DOL issued an opinion letter in 1998 stating that it recognized the DOMA definition as controlling. In 2013, the U.S. Supreme Court held that DOMA was unconstitutional. By allowing for the possibility for federal law to recognize same-sex marriages, this Supreme Court ruling effectively (albeit temporarily) re-established the DOL's "state of residence" rule.

The FMLA regulations going into effect this month further expand the definition of covered spouses. Beginning March 27, 2015, employers must recognize a "spouse" for FMLA purposes using a "state of celebration" rule, rather than the prior "state of residence" rule or the more restrictive DOMA limitation to male-female marriages, including recognizing marriages from foreign jurisdictions. Under the new regulations, "spouse" is defined as "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 [including same-sex and common law marriages]."

In response to employer concerns about the potential administrative burden of this new definition, the DOL noted that employers need only familiarize themselves with a particular jurisdiction's marriage laws upon receiving an FMLA request. The DOL also noted that its recognition of same-sex marriages will not intrude on any state's right to define marriage because the FMLA is a federal right that does not require any state action other than when the state acts as an employer.

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This Alert was prepared by Lena-Kate Ahern, an attorney in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Ahern, the attorney assigned to your account, or your own labor counsel.

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