



Proposed Rule Extends FMLA Protections to All Eligible Employees in Same-Sex Marriages

The U.S. Department of Labor (DOL) has [announced](#) a proposed rule extending the protections of the federal Family and Medical Leave Act (FMLA) to all eligible employees in legal same-sex marriages, regardless of where they live.

Background

Under the FMLA, an [eligible employee](#) of a covered employer (50 or more employees in at least 20 workweeks in the current or preceding calendar year) is entitled to take unpaid, job-protected leave for specified family and medical reasons, including to care for the employee's spouse who has a serious health condition.



The U.S. Supreme Court's decision in *United States v. Windsor* struck down the federal Defense of Marriage Act provision that interpreted "marriage" and "spouse" to be limited to opposite-sex marriage for purposes of federal law. In response, the DOL revised its agency guidance, effective as of June 26, 2013, to clarify the definition of "spouse," for purposes of the FMLA, to mean 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.

Proposed Rule

The proposed rule makes significant changes from previously issued guidance. Such changes include the following:

- The FMLA regulatory definition of "spouse" is **based on the law of the place where the marriage was entered into**, sometimes referred to as the "place of celebration" (currently, the regulatory definition of "spouse" only applies to same-sex spouses who reside in a state that recognizes same-sex marriage).
- The proposed definition of "spouse" expressly references the inclusion of same-sex marriages (in addition to common law marriages), and will encompass same-sex marriages entered into abroad that could have been entered into in at least one state.

The proposed definitional change would mean that eligible employees, regardless of where they live, would be able to:

- Take FMLA leave to care for their same-sex spouse with a serious health condition;
- Take qualifying exigency leave due to their same-sex spouse's covered military service;
- Take military caregiver leave for their same-sex spouse; or
- Take FMLA leave to care for their stepchild or stepparent, even if certain [in loco parentis](#) requirements are not met.

You may read the proposed rule by [clicking here](#). A [Fact Sheet](#) and [FAQs](#) regarding the proposed rule are also available for downloading.

To learn more about the eligibility requirements and qualifying reasons for FMLA leave, visit the [Family and Medical Leave Act](#) section of your online HR library.

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