

FACT SHEET: PROPOSED RULEMAKING TO AMEND THE DEFINITION OF SPOUSE IN THE FAMILY AND MEDICAL LEAVE ACT REGULATIONS

Last year, in *United States v. Windsor*, the Supreme Court struck down section 3 of the Defense of Marriage Act (DOMA) as unconstitutional. President Obama said: This ruling is a victory for couples who have long fought for equal treatment under the law, for children whose parents' marriages will now be recognized, rightly, as legitimate; for families that, at long last, will get the respect and protection they deserve; and for friends and supporters who have wanted nothing more than to see their loved ones treated fairly and have worked hard to persuade their nation to change for the better.

The President instructed the Cabinet to review all relevant federal statutes to ensure the decision, including its implications for federal benefits and programs, is implemented.

In light of this directive and to ensure all families will have the flexibility to deal with serious medical and family situations without fearing the threat of job loss, we are moving to update the regulatory definition of spouse under the Family and Medical Leave Act (FMLA), which entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.

We are publishing a Notice of Proposed Rulemaking (NPRM) to amend the regulatory definition of spouse under the FMLA so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live. This will ensure that the FMLA will now be applied to all families equally, giving spouses in same-sex marriages the same ability as all spouses to fully exercise their rights and responsibilities to their family.

What is the Family and Medical Leave Act (FMLA)?

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees may take up to 12 workweeks of FMLA leave in a 12-month period:

- for the birth of the employee's child and for newborn care;
- for the placement of a child with the employee for adoption or foster care;
- to care for the employee's spouse, parent, son, or daughter with a serious health condition; or
- when the employee is unable to perform the functions of his or her job due to the employee's own serious health condition.

The FMLA also includes certain military family leave provisions:

- *Military Caregiver Leave*: Entitles eligible employees who are the spouse, son, daughter, parent, or next of kin of a covered servicemember (current member or veteran of the National

Guard, Reserves, or Regular Armed Forces) with a serious injury or illness incurred in the line of duty to take up to 26 workweeks of unpaid, job-protected leave during a single 12-month period to care for their family member.

- *Qualifying Exigency Leave:* Entitles eligible employees to take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for a “qualifying exigency” related to the foreign deployment of the employee’s spouse, son, daughter, or parent.

Major features of the NPRM

- The Department is proposing to move from a “state of residence” rule to a rule based on where the marriage was entered into (sometimes referred to as “place of celebration”). The NPRM proposes to change the regulatory definition of spouse in 29 CFR §§ 825.102 and 825.122(b) to look to the law of the place in which the marriage was entered into, as opposed to the law of the State in which the employee resides. A place of celebration rule would allow all legally married couples, whether opposite-sex or same-sex, or married under common law, to have consistent federal family leave rights regardless of where they live.
- 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.

What impact would this definitional change have on FMLA leave usage?

- 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; or
 - Take military caregiver leave for their same-sex spouse.
- The proposed change would entitle eligible employees to take FMLA leave to care for their stepchild (child of employee’s same-sex spouse) even if the *in loco parentis* requirement of providing day-to-day care or financial support for the child is not met.

The Department has consistently recognized the eligibility of same-sex partners, whether married or not, to take leave to care for a partner’s child provided that they meet the *in loco parentis* requirement of providing day-to-day care or financial support for the child. For more information on FMLA leave on the basis of an *in loco parentis* relationship, see Fact Sheet #28B at <http://www.dol.gov/whd/regs/compliance/whdfs28B.htm>.)

- The proposed change would also entitle eligible employees to take FMLA leave to care for their stepparent (same-sex spouse of the employee’s parent), even though the stepparent never stood *in loco parentis* to the employee.

The Department encourages interested parties to submit comments on this proposal. The full text of the NPRM, as well as information on the deadline for submitting comments and the procedures for submitting comments can be found at www.dol.gov/whd/fmla/nprm-spouse.

For additional information on the FMLA, please visit www.dol.gov/whd/fmla.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)