

## **FACT SHEET: FINAL RULE TO AMEND THE DEFINITION OF SPOUSE IN THE FAMILY AND MEDICAL LEAVE ACT REGULATIONS**

In 2013, the Supreme Court in *United States v. Windsor* struck down section 3 of the Defense of Marriage Act (DOMA) as unconstitutional. In a June 26, 2013, press release responding to the decision, 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 implement the decision, including its implications for federal benefits and programs. The Department reviewed the application of the President’s directive to 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.

Immediately following the *Windsor* decision, the Department announced what the then-current definition of spouse under the FMLA allowed, given the decision: Eligible employees could take leave under the FMLA to care for a same-sex spouse, but only if the employee resided in a state that recognizes same-sex marriage. This ensured that as many families as possible would have the opportunity to deal with serious medical and family situations without fearing the threat of job loss.

In order to provide FMLA rights to all legally married same-sex couples consistent with the *Windsor* decision and the President’s directive, the Department subsequently issued a Final Rule on February 25, 2015, revising the regulatory definition of spouse under the FMLA. The Final Rule amends 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 give spouses in same-sex marriages the same ability as all spouses to fully exercise their FMLA rights. The Final Rule is effective on March 27, 2015.

### **What is the Family and Medical Leave Act?**

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. A covered employer is a:

- private sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year;
- public agency, including a local, state, or federal government agency, regardless of the number of employees it employs; or
- public or private elementary or secondary school, regardless of the number of employees it employs.

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 bonding with the newborn;
- for the placement of a child with the employee for adoption or foster care and for bonding with the newly-placed child;
- to care for the employee’s spouse, son, daughter, or parent with a serious health condition; or
- when the employee is unable to perform the essential 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 or aggravated in the line of duty to take up to 26 workweeks of FMLA 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 FMLA 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 Final Rule**

- The Department has moved from a “state of residence” rule to a “place of celebration” rule for the definition of spouse under the FMLA regulations. The Final Rule changes 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 allows 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 Final Rule’s definition of spouse expressly includes individuals in lawfully recognized same-sex and common law marriages and marriages that were validly entered into outside of the United States if they could have been entered into in at least one state.

### **What impact does this definitional change have on FMLA leave usage?**

- This definitional change means that eligible employees, regardless of where they live, will be able to
  - take FMLA leave to care for their lawfully married same-sex spouse with a serious health condition,
  - take qualifying exigency leave due to their lawfully married same-sex spouse’s covered military service, or
  - take military caregiver leave for their lawfully married same-sex spouse.
- This change entitles eligible employees to take FMLA leave to care for their stepchild (child of employee’s same-sex spouse) regardless of whether the *in loco parentis* requirement of providing day-to-day care or financial support for the child is met.<sup>1</sup>

---

<sup>1</sup> Apart from the Final Rule, the Department has consistently recognized the eligibility of individuals, whether married or not, to take leave to care for a partner’s child if they meet the *in loco parentis* requirement of providing day-to-day care or financial support for the child. For more information on

- This change also entitles eligible employees to take FMLA leave to care for a stepparent who is a same-sex spouse of the employee's parent, regardless of whether the stepparent ever stood *in loco parentis* to the employee.

The full text of the Final Rule can be found at <http://www.dol.gov/whd/fmla/spouse/>.

For additional information on the FMLA, please visit [www.dol.gov/whd/fmla](http://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](#)