

FMLA Final Rule: 'Spouse' Means Same-Sex Spouse (Even In Alabama)

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Even for HR veterans, administering the FMLA still triggers occasional anxiety attacks. Within the last two weeks, I was asked, “How should we treat same-sex spouses under the FMLA?” On at least this cause for nervousness, the Department of Labor has finally issued clear guidance.

On Feb. 23, Secretary of Labor Thomas Perez announced, in essence, that under the FMLA, “spouse” means “spouse,” even if you are living in a state that does not recognize same sex marriages. The DOL’s Final Rule announced yesterday tosses the term “spouse” as once defined by the “state of residence,” in favor of “spouse” defined based on the “place of celebration.” In other words, even if you have employees working where same-sex marriage is not recognized, those employees’ spouses would trigger FMLA coverage if your employee was married in one of the 32 states (or the District of Columbia) that allow gay marriage. The DOL’s Final Rule follows the U.S. Supreme Court’s decision in the summer of 2013, in which the Court rejected the federal Defense of Marriage Act. (*United States v. Windsor*, 133 S.Ct. 2675 (U.S. 2013)).

For the last several months, the DOL had been receiving comments from various organizations about the rule change, and reports that the “vast majority” supported the change. As for marriage equality in Alabama, the war rages on. In late January, a federal judge there ruled in favor of same-sex marriage, but the State Supreme Court refused to recognize the decision. Putting federal-state judge bickering aside, the FMLA rules are clear, a spouse is a spouse—no matter what sex or what state. Please see update to this blog post ["Caveat to the FMLA Final Rule on Same-Sex Spouses: Not Yet."](#)

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