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FMLA's New Definition of Spouse to Go Into Effect March 27, 2015

In order to provide FMLA rights to all legally married same-sex couples, the Department of Labor ("DOL") has issued a Final Rule revising the regulatory definition of spouse under the FMLA which will go into effect on March 27.

For purposes of the FMLA, the definition of "spouse" now includes all individuals in legal marriages, regardless of where they live. "More specifically, the definition of spouse is now a husband or wife as defined or recognized in the state where the individual was married ('place of celebration'), and specifically includes individuals in same-sex and common law marriages. The Final Rule also defines spouse to include a husband or wife in a marriage that was validly entered into outside of the United States if it could have been entered into in at least one state." <http://www.dol.gov/whd/fmla/spouse/faq.htm>

This definitional change means that eligible employees 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 new definition also 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. Additionally, eligible employees are entitled 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.

Employers will need to review their employee handbooks to make sure that individuals in lawful same-sex marriages are included in the FMLA policies. It is also important that employers train those individuals who administer FMLA leave on the DOL's Final Rule before its effective date.

Weber Gallagher's Employment Group can assist employers in complying with the new rule. For more information, please contact Tracy A. Walsh at twalsh@wglaw.com or 215.825.7224, or Brett A. Zahorchak, at bzahorchak@wglaw.com or 267.519.4976.