

PUBLICATION

DOL Update on Qualifying Reasons for Leave Fact Sheet

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August 15, 2013

On Friday, August 9, 2013, the Department of Labor (DOL) updated its [Fact Sheet](#) on Qualifying Reasons for Leave under the Family and Medical Leave Act (FMLA). This fact sheet states that for purposes of the FMLA a "spouse" includes a same-gender spouse if the marriage is recognized under the laws of the state in which the employee resides. Thus, employers will have to apply the FMLA rules on a state-by-state basis for employees with same-gender spouses. At present, 13 states and the District of Columbia permit or recognize same-gender marriages. Employees who are residents of these states will be entitled to up to 12 weeks of leave in a 12-month period to care for a seriously ill spouse or for activities that arise in connection with a military spouse's deployment and up to 26 weeks of caregiver leave for a military spouse who is seriously injured or ill, if they are otherwise eligible for FMLA leave. Note that these rights may be expanded in light of a recent statement made by Labor Secretary, Tom Perez, that the DOL will take additional steps to implement the Supreme Court's decision on DOMA "in a way that provides the maximum protection for workers and their families." This statement indicates that the DOL may eventually revise the regulations to extend FMLA rights to allow leave for the care of legally married same-gender spouses regardless of their state of residence.