

PUBLICATION

Time to Do Something About It: Governmental Agencies Issue Revised Policies in Light of Windsor Decision

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Earlier this month, we said it was "Time for Employers to Review Their Family Medical Leave Act Policies Following the Supreme Court's Decision to Strike Down DOMA." The time has indeed come as many governmental agencies are issuing revised policies regarding benefits in light of the *Windsor* decision.

The Department of Labor recently issued an internal memorandum stating that the Department has updated many of the agency documents to reflect the effect of the recent changes in the law on the Family and Medical Leave Act. The memo advised that the Department was removing all references to the Defense of Marriage Act and affirmed that a "spouse" entitled to leave under the FMLA to care for spouses with a serious health condition included individuals in same-sex marriages residing in states that recognize same-sex marriage. See Fact Sheet 28F for a recent example of one of the DOL's revised guidance document.

<http://www.dol.gov/whd/regs/compliance/whdfs28f.htm>

As it is currently written, FMLA regulations only provide leave for employees taking care of same-sex spouses with serious illnesses if that employee **resides** in a state that recognizes same-sex marriage. At this point, only California, Connecticut, Delaware, Iowa, Massachusetts, New Hampshire, Maine, Maryland, Minnesota, New York, Rhode Island, Vermont, Washington and the District of Columbia recognize same-sex marriages. Thus, any employee caring for their same-sex spouse who resides in those states would be entitled to leave under the FMLA. What is unclear, however, is whether an employer in a state that does not recognize same-sex marriage employing an employee residing in a state that does recognize same-sex marriage must provide FMLA leave time to that employee. The DOL has not issued any further guidance.

It is evident that agencies will continue to develop and revise policies that are implicated by the high court's June decision which means more clarification for employers updating their own benefits policies. In order to ensure compliance with the FMLA, employers should update FMLA leave policies and documents and educate and train managers and human resources employees on these changes. Also, continue monitoring DOL guidance documents, including checking our website for updates and interpretations of agency regulations or contact an attorney with any FMLA leave questions you may have.

As more changes are to come, we will continue to bring you the latest news so you can stay in the know and remain compliant.