

# DOL Expands Definition of “Spouse” under the Family and Medical Leave Act

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The **Department of Labor** has issued a Final Rule revising and expanding the definition of “spouse” under the **Family and Medical Leave Act**. The Rule, which goes into effect March 27, 2015, changes the basis for determining a spousal relationship from the state of the employee’s residence to the “place of celebration” (i.e., where the marriage was entered into). The DOL’s new Rule requires employers to provide FMLA leave rights to same-sex spouses and same-sex common law marriages that were formed in states (or countries, so long as the terms of the marriage are legal in at least one U.S. state) where such a marriage was legal. This Rule applies to employers subject to the FMLA even if the state in which the employee lives does not recognize the validity of such marriages.

Interestingly, despite the focus on common law marriage, the DOL also makes clear in separate FAQs released on the same day that the definition of spouse does not include individuals who are in a civil union.

## What does this mean for employers?

- Effective March 27, 2015, eligible employees may seek leave for the serious health condition of, the serious illness or injury of, or qualifying exigencies associated with the covered active duty of:
  - the common law or same-sex spouse;
  - a stepchild (i.e., the child of the common law or same-sex spouse) with no side requirement that the employee have stood in loco parentis to the stepchild; and
  - a stepparent (i.e., the spouse of a parent who is engaged in a common law or same-sex marriage) with no side requirement that the stepparent stood in loco parentis to the employee;

- Employers should develop familiarity with the common law rules of other states if presented with such a relationship by employees; and
- Employers will need to examine their FMLA policy and forms for any necessary modification. In particular, employers requiring spouses who are both employed by the employer to split FMLA time will want to ensure that the language properly addresses same-sex marriages.

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