

EMPLOYMENT SERVICES ALERT

2/25/15

Department of Labor Finalizes Rule to Extend FMLA Protections to Same-Sex Married Couples

The United States Department of Labor today announced the finalization of a rule to extend the Family Medical Leave Act's protections to married, same-sex couples regardless of whether the state in which they reside recognizes same-sex marriage. The rule will take effect on **March 27, 2015**.

The FMLA allows eligible workers of covered employers to take up to 12 weeks of unpaid leave, every 12 months, to, among other things, care for a newborn, or a spouse, child, or parent with a serious health condition. While same-sex spouses have been able to previously avail themselves of the FMLA's protections, in order to do so, they must reside in a state that recognizes their marriage as valid. The rule finalized today means that same-sex spouses can avail themselves of the FMLA protections based on the law of the state or country where the couple was married. As such, all legally married same-sex couples will have consistent FMLA rights regardless of where they reside.

This shift to the "state of celebration" from the "state of residence" is a major revision of the FMLA's definition of the term "spouse." While the final rule defines a "spouse" as a "husband" or "wife," the rule makes it clear that those terms refer to all persons in lawfully recognized marriages, same-sex or opposite-sex, and whether those marriages were entered into in the United States or abroad.

The impending effective date of this rule means that your FMLA policies and internal practices with respect to administering the FMLA for your employees will need to be revised and your human resources or other administrative personnel be appropriately trained.

Please do not hesitate to contact any of the following Roetzel employment attorneys should you have any questions regarding this topic.

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