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Under Final FMLA Rule, Rights for Same-Sex Spouses Will Be Based On “Place of Celebration”

On February 23, 2015, the Department of Labor (DOL) [announced](#) the final rule to revise the definition of spouse under the Family Medical Leave Act (FMLA). The changes to the FMLA regulations will take effect on March 27, 2015.

The changes to the rules are the result of last years [U.S. Supreme Court decision](#), *United States v. Windsor*, overruling Section 3 of the Defense of Marriage Act (DOMA) which defined marriage for purposes of federal law as being between one man and one woman. Consistent with Section 3 of the DOMA, the DOL has traditionally defined marriage for FMLA purposes as male-female. With respect to opposite-sex spouses, the DOL determined whether a couple was validly married based on their state of residence. That is because Section 2 of DOMA, which was not addressed in the *Windsor* decision, says that a state does not have to recognize a same-sex marriage, even if it was valid in the state where it was entered.

Under the new rule, place of residence will be replaced with place of celebration to determine the validity of a marriage for FMLA purposes. In other words, if a same-sex couple was validly married in any state, they are spouses for FMLA purposes regardless of where they live. If same-sex couples are married outside of the United States, they will be considered spouses for FMLA purposes as long as the marriage: 1) was valid where entered, and 2) would be considered valid in at least one state.

The Supreme Court announced in January of this year that it has decided to review the right of states to ban same-sex marriage. As a result, the changes to the rule may prove to be unnecessary if the Supreme Court overrules Section 2 of DOMA and rules that a valid same-sex marriage must be recognized by other states.