

CLIENT ALERT: U.S. Department of Labor Extends Family Medical Leave Act To Same-Sex Married Spouses

On August 9, 2013, Labor Secretary Tom Perez announced that legally married same-sex couples are eligible for spousal leave provisions under the Family and Medical Leave Act (“FMLA”). The announcement by the head of the Department of Labor is part of the Department of Labor’s ongoing efforts to fully implement the United States Supreme Court’s decision in *United States v. Windsor*, which struck down the Defense of Marriage Act. Prior to the Supreme Court decision, the federal government was prohibited from recognizing same-sex marriages and the Department of Labor did not require employers to grant same-sex couples spousal leave under FMLA.

The Department of Labor’s new guidance means eligible same-sex spouses who are employed by covered employers are entitled “to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.” The Department of Labor has explained that “spouse” means a “husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including “common law” marriage and same-sex marriage.” Rights under the FMLA will not apply to married same-sex couples if their place of residence does not recognize same-sex marriage.

Employers should contact their MBJ attorney with questions concerning FMLA benefits for legally married same-sex spouses in any particular jurisdiction.

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