

Supreme Court Decision Entitles Married Same-Sex Couples to Spousal Leave under the FMLA

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On June 26, 2015, the U.S. Supreme Court issued its ruling *Obergefell v. Hodges*, giving same-sex couples the right to marry in all 50 states. The Court held that the U.S. Constitution requires states to license a marriage for same-sex couples, and to recognize a marriage between same-sex couples when their marriage was lawfully licensed and performed out of state. The Court's decision will have far-reaching implications, including expanding the application of a number of state and federal employment laws that grant certain rights to spouses.

One area impacted will be the application of leave benefits under the Family Medical Leave Act (FMLA). The FMLA requires covered employers to provide 12 weeks of leave per year for employees dealing with a serious health condition of a spouse. Under the FMLA, employees are also entitled to leave for a spouse's covered military service and for military caregiver leave.

Prior to *Obergefell*, Texas courts used a "place of residence" test to determine eligibility for spousal leave under the FMLA. Therefore, because same-sex marriage was not valid in Texas, Texas employers could deny same-sex couples spousal leave under the FMLA even if they entered into marriage in a state allowing same-sex marriage. Now, as a result of the Supreme Court's decision, same-sex marriages are valid in Texas. Texas employers must recognize same-sex marriage and provide FMLA spousal leave regardless of where they were married or where they live.

Obergefell will also impact employers with employees in various states by creating one uniform definition of "spouse." Previously, states used different tests to determine eligibility for spousal leave under the FMLA. However, employers with offices in multiple states no longer need to consider state law in determining the validity of an employee's same-sex marriage. Same-sex marriage is now valid in all states, making all married couples covered. Employers with offices in multiple states may see that this decision lightens their administrative burden because they can now provide a consistent FMLA policy across the states.

All covered employers need to evaluate how their FMLA policies will be affected by this change, including the policies set forth in their employee handbooks. Employers should also look at how their handbooks define "spouse" in all policies, and adjust the definition to include same-sex marriages.

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