

DOL Proposes to Revise “Spouse” Definition for FMLA Purposes

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The U.S. Department of Labor (the “**DOL**”) has issued a notice of proposed rulemaking regarding a revision to the definition of “spouse” under the Family and Medical Leave Act of 1993 (“**FMLA**”). The revision is being proposed in light of the U.S. Supreme Court’s decision in *United States v. Windsor*, which held Section 3 of the federal Defense of Marriage Act, restricting the definition of “marriage” for federal law purposes to opposite-sex spouses, to be unconstitutional. Under the FMLA, eligible employees are permitted to take a leave of absence to care for a spouse in certain situations. Current regulations under the FMLA define “spouse” based on the law of the state in which the employee resides; consequently, a same-sex couple who is married in a state or foreign jurisdiction that allows same-sex marriage is not treated as married under the FMLA if they reside in a state that does not recognize same-sex marriage. The DOL proposes to change the definition of “spouse” to be based on marriage as defined or recognized under the law of the state in which the marriage took place. If the marriage was entered into in a foreign jurisdiction, it would be recognized under the FMLA if it could have been entered into in at least one U.S. state. A copy of the Notice of Proposed Rulemaking is available [here](#). A copy of related FAQs issued by the DOL is available [here](#). A copy of a related Fact Sheet issued by the DOL is available [here](#).