

FMLA Protections Should Include Same-Sex Spouses Everywhere, Says DOL

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Same-sex spouses everywhere in the United States—even if they live in states that don't recognize their marriages—should be entitled to the benefits and protections under the Family and Medical Leave Act (FMLA), according to a proposal announced earlier today by Labor Secretary Thomas Perez. This announcement is consistent with the Obama Administration's aggressive use of the powers of the Executive Branch and with the Supreme Court's decision last summer in *United States v. Windsor*, which struck down key provisions of the "Defense of Marriage Act." Currently, a "spouse" under the FMLA includes those in same-sex marriages only where such same-sex marriages are recognized. The DOL's proposed rule would redefine the term "spouse" in the FMLA regulations so that an employee's residence becomes irrelevant. It would allow an employee married legally in one state to move to another state where his or her marriage is not recognized, and yet, remain entitled to the protections under the FMLA. In technical terms, the proposal is moving from a "state of residence" to a "state of celebration" rule. Once you're legally married, then you are legally a spouse, no matter where you live. This proposed expansion of the FMLA regulations is another example of the reach of the Obama Administration, which has the authority to propose regulatory changes to the interpretation of the laws—not to the laws themselves. The proposed regulations will be published in the Federal Register, after which 45 days of comments will be accepted for consideration. For more information on the proposed revisions, click [here](#).

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