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FMLA Marriage Definition Change Affecting Same-Sex Marriages Takes Effect March 27

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The Family Medical Leave Act ("FMLA") provides leave rights for employees and, in various situations, provides for leave rights relating to family members, including an employee's "spouse". Currently, the Department of Labor ("DOL") FMLA regulations define "spouse" as a husband and wife as defined for purposes of marriage by the laws "in the state where the employee resides." Effective March 27, 2015, the regulatory definition of "spouse" will change. Going forward, the validity of a marriage for FMLA purposes will be determined based upon the laws of the "place of celebration" of the marriage rather than the location where the employee resides at the time he or she requests FMLA leave.

This definitional change is applicable to any marriage but, the main impact of this change will be in relation to same-sex marriages. Under the new "place of celebration" definition, employers in states which do not recognize same-sex marriages must recognize a valid same-sex marriage conducted in another state or country for purposes of determining FMLA leave eligibility in relation to a "spouse."

The definition of "spouse" comes into play in several parts of FMLA. Eligible employees are entitled to FMLA leave to care for a spouse who has a serious health condition. The FMLA provides for "exigent circumstances" leave with relation to a spouse who is called to active military service or injured while on active duty. Further, the FMLA provides for some restrictions on the timing and availability of leave for care of a newborn or adopted child in situations where both spouses work for the same employer. The new definition of "spouse" will apply throughout the FMLA.

What does this mean for employers? Under the prior regulation, an employee could have entered into a valid recognized same-sex marriage in one state, but, if employed and residing in another state which did not recognize same-sex marriages, the

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employee would not have been eligible for spousal based leave. For example, Michigan, as of this writing, does not recognize same-sex marriages. Under the new definition, Michigan employers must recognize valid same-sex marriages conducted in other states for FMLA purposes. Employers need to make sure that their personnel who are responsible for administering FMLA leave are aware of the change in the definition of spouse. This is particularly true if the employer is located in a state which does not currently recognize same-sex marriages.

Employers may have to inquire as to the validity of a claimed same-sex marriage in order to ascertain eligibility for FMLA leave. Employers have always been allowed to request proof of a valid marriage under the regulations and will continue to be able to do so.

Employers also should update their current FMLA policies if they contain a definition of "spouse" which is different than the regulations which will take effect on March 27.

If you have any questions, please contact your Butzel Long labor and employment attorney.

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