

Federal Judge Blocks FMLA's Expanded Definition of Spouse

On February 25, the DOL issued a final rule that revises the definition of “spouse” under the federal Family and Medical Leave Act to cover all legally married, same-sex spouses regardless of where they live. The attorneys general of Texas, Arkansas, Louisiana, and Nebraska filed suit to strike down the rule as contrary to their state laws. On March 26, a federal judge in Texas granted a preliminary injunction to stop DOL enforcement. The court has scheduled an April 10 hearing on the injunction. Employers will want to monitor developments closely.

Background

The federal Defense of Marriage Act (DOMA) defined “marriage” as only a legal union between one man and one woman, and it precluded recognition of same-sex marriages for all federal purposes — including the Family and Medical Leave Act (FMLA). In *United States v. Windsor*, the Supreme Court struck down DOMA’s exclusion of legally performed same-sex marriages from federal recognition as unconstitutional, but upheld a state’s right to decide whether to recognize a same-sex marriage legally performed in another state. (See our [July 12, 2013 For Your Information](#).) DOL regulations then in effect did not require employers to make FMLA leave available to same-sex spouses who lived in a state that did not recognize same-sex marriage.

Last month, the DOL published a final rule revising the FMLA definition of spouse in light of the *Windsor* decision to include legally married same-sex and common law spouses, effective March 27. The final rule determines spousal status based on the laws of the state where the employee was married — the “place of celebration” — regardless of whether the laws of the state where the couple lives recognize such marriages. (See our [February 27, 2015 For Your Information](#).)

Legal Challenge

On March 18, the state of Texas filed [suit](#) against the DOL to block the final FMLA rule from going into effect. The Texas attorney general notified state agency heads of the lawsuit, and [advised](#) them to continue to follow state law that does not recognize same-sex marriages rather than the DOL’s new rule. Soon thereafter, three other



states that also do not recognize same-sex marriages from other jurisdictions — Arkansas, Louisiana, and Nebraska — joined the lawsuit challenging the DOL’s new rule.

The states took issue with the newly revised definition of “spouse” under the FMLA, alleging that it is in direct violation of state and federal laws and the US Constitution. Among other things, the states contend that the DOL’s new FMLA rule redefining marriage violates the:

- Federal full faith and credit statute (DOMA Section 2) by requiring them to give effect to a same-sex marriage from another state by granting FMLA benefits in violation of state law
- Tenth Amendment that reserves to the states those powers not specifically granted to the federal government by interfering with state laws governing domestic relations
- Eleventh Amendment by unlawfully abrogating their state sovereign immunity

Comment. Challenges to Arkansas, Nebraska, Louisiana, and Texas bans on same-sex marriage are currently before two federal appellate courts. On January 9, the Fifth Circuit Court of Appeals heard arguments in three federal marriage cases — one from Texas, one from Louisiana, and one from Mississippi. A ruling is pending. The Eighth Circuit Court of Appeals has scheduled arguments for the week of May 11 on same-sex marriage cases from Arkansas, Nebraska, Missouri, and South Dakota.

DOMA Section 2

DOMA provides:

“No State ... shall be required to give effect to any public act, record, or judicial proceeding of any other State ... respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State ... or a right or claim arising from such relationship.”

The Ruling

On March 26, federal district court Judge Reed O’Connor [granted](#) a preliminary injunction, ordering the DOL to stay the application of its final rule pending a full determination of the lawsuit on the merits of the states’ claims. The ruling temporarily blocks the DOL’s expansion of the definition of spouse for FMLA purposes and the extension of leave benefits to some same-sex couples. The court agreed to hold a hearing if requested by a party.

The court found that the states met their burden to show: (1) irreparable harm if the rule were allowed to go into effect; (2) a substantial likelihood of success on the merits; (3) the balance of hardships weighs in their favor; and (4) issuance of a preliminary injunction would not disserve the public interest. In deciding to maintain the status quo for now, the court stressed the public’s overriding interest in protecting “the states’ duly enacted laws from federal encroachment.” At the same time, Judge O’Connor notes that his order does not prohibit employers from granting leave “to those who request leave to care for a loved one.”

Parties React

After the ruling, Texas Attorney General Ken Paxton released a [statement](#) saying that the DOL’s new FMLA rule requiring recognition of employees’ same-sex marriages would essentially force state agencies to choose between violating federal regulations and complying with state law.

On March 31, the Department of Justice (DOJ) [requested](#) a hearing on the preliminary injunction. In that request, the DOJ represented that the government would not try to enforce the new FMLA provisions against the state

governments of Texas, Arkansas, Louisiana, and Nebraska while the preliminary injunction is in effect. However, the government also stated its understanding that it could enforce the provisions against other persons.

Comment. On April 28, the Supreme Court will hear the four same-sex marriage cases it has [agreed](#) to decide. The Court will hear argument on two questions: (1) does the 14th Amendment require a state to license a marriage between two people of the same sex: and (2) does the 14th Amendment requires a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. The outcome of that case may render the challenge to the FMLA rule moot.

In Closing

A federal court has put the DOL's new FMLA rule on hold. While the court barred the DOL from applying the rule in four states pending a final ruling on the case, the ruling is temporary — not final. The DOJ has urged the court to reconsider its ruling, and a hearing date has been set for April 10. Employers will want to closely monitor further developments.

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