

# FYI<sup>®</sup> Alert

## For Your Information<sup>®</sup>

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## Federal Judge Again Blocks FMLA's Expanded Definition of Spouse

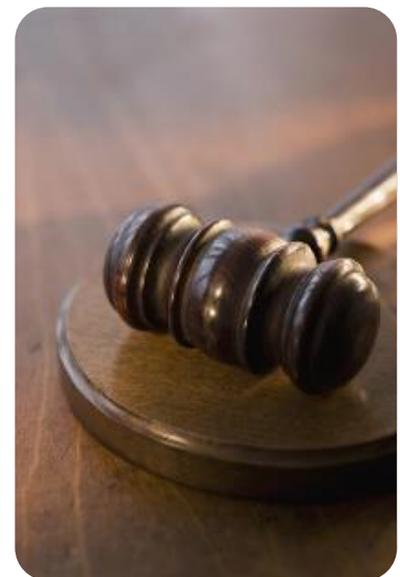
In February, the DOL issued a final rule revising the definition of “spouse” under the federal Family and Medical Leave Act to cover all legally married, same-sex spouses regardless of where they live. The attorneys general of Texas, Arkansas, Louisiana, and Nebraska sued, and a federal judge in Texas granted a preliminary injunction to stop DOL enforcement on March 26 – the day before the rule was to take effect. As the Texas Attorney General reports, the DOL unsuccessfully sought to dissolve the injunction at an April 10 hearing. Employers will want to continue to monitor developments closely.

### Background

By defining “marriage” as only a legal union between one man and one woman, the federal Defense of Marriage Act (DOMA) precluded recognition of same-sex marriages for federal purposes — including the Family and Medical Leave Act (FMLA). In *United States v. Windsor*, the Supreme Court struck down that provision, but left it to each state to decide whether to recognize a same-sex marriage performed elsewhere.

In February 2015, the DOL issued a final FMLA rule redefining “spouse” to include legally married same-sex and common law spouses, effective March 27. The rule determines spousal status based on the laws of the state where the employee was married — not where the couple lives. (See our *For Your Information* from [February 27, 2015](#).)

Last month, four states —Texas, Arkansas, Louisiana and Nebraska — filed suit against the DOL to block the final FMLA rule from taking effect. The states alleged that the rule’s expanded definition of spouse violates state and federal laws and the US Constitution. On March 26, federal district court Judge Reed O’Connor put the FMLA rule on hold pending a final ruling on the case. The DOL urged the court to reconsider. (See our [April 7, 2015](#) *For Your Information*.)



## Preliminary Injunction Remains

On April 10, the court held a hearing on the preliminary injunction. According to a press release by [Texas Attorney General Ken Paxton](#), Judge O'Connor rejected the DOL's request to dissolve the preliminary injunction that he had issued last month. As a result, the court's prior order blocking the revisions to the FMLA from taking effect and the extension of leave benefits to some same-sex couples remains in place for now.

**Comment.** Broader challenges to state marriage laws are currently pending in federal appellate courts and at the Supreme Court. For example, the Fifth Circuit Court of Appeals is considering challenges to Texas and Louisiana bans on same-sex marriage, and the Eighth Circuit Court of Appeals has pending same-sex marriage cases from Arkansas and Nebraska. On April 28, the Supreme Court will hear the four same-sex marriage cases it has agreed to consider, with a decision expected in June. The outcome of that case may render the challenge to the FMLA rule moot.

## In Closing

At an April 10 hearing, the DOL was unsuccessful in convincing a federal court in Texas to reverse its earlier ruling and dissolve the preliminary injunction barring the DOL from applying the revised FMLA rule in four states — Texas, Arkansas, Louisiana and Nebraska. For now, the preliminary injunction on enforcement remains in place. Employers will want to continue to monitor further developments closely as this case and other challenges to state marriage laws move forward.

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