
# Obergefell Ruling Reaffirms That Employees In Same-Sex Marriages Have FMLA Rights

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Earlier this year, the U.S. Department of Labor (DOL) **issued a final rule** defining "spouse" under the Family and Medical Leave Act (FMLA) so that an eligible employee in a same-sex marriage is able to take FMLA leave to care for his or her spouse or family member, regardless of whether the state in which they live recognizes same-sex marriages. That rule became effective on March 26, 2015. The DOL has not issued any additional guidance yet in light of *Obergefell v. Hodges*, but it seems clear that *Obergefell* means that all employers are required to permit eligible employees in same-sex marriages to take FMLA leave to care for their spouses since such marriages are now lawful in every state. Notably, the DOL's rule does not recognize civil-union partners as "spouses" under the FMLA. Finally, the DOL held in 2010 that the FMLA requires employers to provide FMLA leave to eligible employees who will be the co-parents of their partners' biological or adoptive children, including leave to bond with the children after birth or adoption, or to care for children with serious health conditions.

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