DOL Issues Final Rule
Changing Definition of “Spouse” Under FMLA

Effective March 27, 2015, the Department of Labor’s new Final Rule on the definition of “spouse” will apply to employers’ administration of leave under the Family and Medical Leave Act (FMLA). Under the new Final Rule, FMLA rights will apply consistently to all individuals in legally recognized marriages, including same-sex and common law marriages, based on the law of the state in which the marriage was entered into (or “celebrated”), rather than the law of the employee’s state of residence, and irrespective of the law of the state in which the employee is employed. This Quick Reference Guide provides key points for understanding the impact of this change.

FMLA Leave May Be Taken By An Employee…

• If the following conditions are met:
  – The employee is employed by an employer with 50 or more employees within a 75-mile radius of the employee’s worksite
  – The employee has been employed for twelve (12) months by a covered employer
  – The employee has worked at least 1,250 hours in the twelve (12) months preceding the leave

• For up to twelve (12) weeks in a twelve (12) month period:
  – to care for the employee’s child after the birth, adoption or foster placement of a child
  – for the employee’s own serious health condition
  – for the serious health condition of the employee’s spouse
  – for the serious health condition of the employee’s child or spouse’s child
  – for the serious health condition of the employee’s parent
  – for qualifying exigency leave related to U.S. military deployment of the employee’s spouse, child or parent

• For up to 26 weeks as military caregiver leave to care for the employee’s spouse, child, parent or next of kin who is a servicemember or veteran with a serious injury or illness related to active duty

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State laws may provide additional benefits, including leave for individuals not considered “married” under state law. Employer policies and practices should be reviewed and updated to ensure compliance with all applicable jurisdictions.

If you have questions, please contact one of our Disability, Leave and Health Management attorneys listed below, or the Jackson Lewis attorney with whom you regularly work.

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The full text of the DOL’s Final Rule can be found at www.dol.gov/whd/fmla/spouse/.