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EMPLOYER LAW BLOG

Federal Court Enjoins DOL FMLA Regulation Addressing Same-Sex Marriages

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The Family Medical and Leave Act in part requires an employer to permit an eligible employee to take a leave of absence arising from the serious medical condition involving the employee's spouse. When Congress enacted the FMLA in 1993, no state had recognized a same-sex marriage. Consequently, the definition of a spouse for FMLA purposes was uncomplicated and uncontroversial.

Since 1993, however, the concept of marriage has undergone considerable debate and development at a national, state and local level. In part, Congress enacted the Defense of Marriage Act ("DOMA") which defined, as a matter of federal law, that marriage could only be between "one man and one woman as husband and wife." In 2013, the U.S. Supreme Court declared DOMA unconstitutional.

While the federal law ban on affording the same privileges to a same-sex married couple was eliminated with the ruling that DOMA was unconstitutional, employers were still left with the inconsistent treatment of same-sex marriages as a matter of state law throughout the country. Some states, such as Illinois, have now amended statutory law to affirmatively recognize same-sex marriages. In other states, courts have declared the state law statutory ban as unconstitutional. Based on the judicial declaration in those states, same-sex marriages in many instances are now being performed. The United States Supreme Court is now set to hear oral arguments later in April and presumably will issue a decision by late June deciding once and for all whether or not a state law ban on same-sex marriages is constitutional.

In the meantime, the Department of Labor was left with the issue of how to define a spouse for purposes of FMLA leave. In February 2015, the DOL issued a final regulation which concluded that a spouse should be determined by the state law in effect where and when the employee was married (either a state or foreign government) rather than under the laws where the employee now resides. By way of example, if the same-sex couple was married either in Iowa or Illinois (which recognizes such marriages) and then moves to Missouri (a state which does not recognize same-sex marriages), Missouri employers were faced with the dilemma of whether or not it had to recognize this marriage under the FMLA. The DOL regulation chose the place of celebration, rather than the place of residence, as the determining factor. As such, the Missouri employer would be required to permit the employee to take FMLA leave to care for his or her same-sex spouse.

The DOL regulation was set to take effect on March 27, 2015. The States of Texas, Arkansas, Louisiana and Nebraska sued to enjoin enforcement of the DOL regulation, arguing that neither the federal government, generally, nor the DOL, specifically, had the power to define marriage for employers within its state borders. On February 26, 2015, a federal judge for the Northern District of Texas entered a temporary restraining order and preliminary injunction in favor of the states and blocked enforcement of the DOL regulation pending further proceedings on the merits of the challenge.

Despite the adverse ruling by the federal judge, the DOL remains unbowed. In response, the DOL has taken an extremely narrow view of the scope of the injunction and contends that the court only enjoined enforcement against the 4 state governments and that it will continue to enforce the Final Rule against all other employers. While the preliminary injunction should not affect employers in the state of Illinois, which has now recognized same-sex marriage, it may affect Missouri employers in the interim until such time as the court either rejects the DOL interpretation of the scope of the preliminary injunction, dissolves the preliminary injunction, or the Supreme Court issues its ruling on the constitutionality of bans on same-sex marriages.

For more information on the Family Medical Leave Act, see our full archive of FMLA blog entries.