



**PROFESSIONAL
PLANNING
ASSOCIATES, INC**

1429 Walnut Street
Philadelphia, PA 19107
215.875.8666 • 215.701.8745 FAX
www.proplanners.org

Family Medical Leave Act (FMLA) extended to same-sex couples and other non-traditional situations relative to child-rearing responsibilities.

On June 22, 2010, the U.S. Department of Labor (DOL) issued an administrative interpretation of the FMLA as it applies to child-rearing responsibilities of employees involved in same-sex and other non-traditional relationships.

The administrative opinion stated that any employee who assumes a child-caring role is entitled to the parental rights of family leave under the FMLA regardless of the employee's legal or biological relationship to the child.

In issuing this decision, the DOL clarified the meaning of "son or daughter" under Section 101(12) of the FMLA in response to questions relating to interpretation of the FMLA provisions when there was no legal or biological parent-child relationship.

FMLA provides up to 12 weeks of unpaid leave for
(1) adoption of a child, (2) birth of a child, and
(3) care of a child with a serious health condition.

This recognition of a non-traditional family broadens the categories of employees who may be entitled to FMLA leave as noted in the following examples:

1. An employee who does not have a legal relationship with a child but is raising an adopted child with a same-sex partner similar to step-parents of children whose biological parents are divorced.
2. An employee who is an uncle or aunt and caring for a nephew or niece when the single parent of the child is called to active duty.
3. A grandparent who assumes responsibility for a sick grandchild when his/her own adult child is incapacitated.

At some point, this administrative opinion may be challenged in federal court. However, for now, this ruling sends a clear message in that all families, including Lesbian Gay Bisexual and Transgender (LGBT) families, are entitled to protection under the FMLA.

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Dave Waters

David..Waters@lpl.com