FMLA rights extended to all same-sex spouses

Regardless of where they live, workers in legal, same-sex marriages now have the same rights as other married employees to take FMLA leave to care for a spouse with a serious health condition. The U.S. Department of Labor announced the FMLA rule change Feb. 24, citing the U.S. Supreme Court’s 2013 ruling in United States v. Windsor.

That decision struck down a provision in the federal Defense of Marriage Act that interpreted “marriage” and “spouse” to be limited to opposite-sex marriage for the purposes of federal law.

The rule change grants FMLA leave rights to same-sex spouses even in states that do not sanction or recognize gay marriage. It updates the FMLA’s definition of “spouse,” which previously did not include same-sex spouses if an employee resided in a state that did not recognize the employee’s same-sex marriage. The new rule makes official changes that were first proposed in July 2014.

Now, eligibility for FMLA protections is based on the law of the place where the marriage was entered into. This “place of celebration” provision allows all legally married couples, to have consistent family leave rights.

Same-sex marriage is now legal in 37 states and the District of Columbia. The change simplifies FMLA administration for multi-state employers, which no longer need one set of rules for employees who live in states where same-sex marriage is legal and one for everyone else. They may now simply treat everyone equally.

Advice: Scrap any FMLA policy that specifically refers to spouses as being of the opposite sex. Employers may make affirmative statements that they recognize any marriage recognized under the new FMLA rule. Train all staff members who implement FMLA policies and procedures to treat same-sex marriages the same way they treat opposite-sex unions.

Online resource: Official Department of Labor guidance