

# CAPLAW *e-news brief*

## Full Recognition for Same-Sex Spouses

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On June 26, 2015, the U.S. Supreme Court held in *Obergefell v. Hodges*, 576 U.S. \_\_\_ (2015), that states are required to license marriages between two people of the same sex as well as to recognize lawfully-licensed, same-sex marriages performed in other states. As a result of this decision, state laws impacting employee leave, benefits and taxes must be expanded to encompass same-sex spouses. While the Obama administration has issued guidance clarifying the impact on federal law of the U.S. Supreme Court's decision in *United States v. Windsor*, 570 U.S. \_\_\_ (2013), *Obergefell* will hasten the full recognition of same-sex marriage under state laws. For more information about the impact of the *Obergefell* decision on employers, read this [legal alert](#) from the law firm Kilpatrick Townsend & Stockton LLP.

Earlier this year, the federal Department of Labor (DOL) issued a final rule, 29 C.F.R. § 825.102, which revised the Family and Medical Leave Act of 1993 (FMLA) to provide protection to same-sex spouses even if the state in which they reside does not recognize same-sex marriage. In 2013, the U.S. Supreme Court in *Windsor* struck down the section of the Defense of Marriage Act of 1996 that defined "marriage" for federal law purposes as a legal union only between one man and one woman. However, because of the existing "place of residence" rule in the FMLA regulations which defined a "spouse" pursuant to the state law where the employee lived, same-sex spouses who were legally married in one state but lived in another state that did not recognize such marriages did not benefit from the decision. Conversely, same-sex spouses of employees living in states that did recognize same-sex marriages were covered by the FMLA. The final rule replaces the "place of residence rule" with a new "place of celebration rule." This revises the definition of a "spouse" under the FMLA to include marriages that are lawful in the jurisdiction in which they are performed, thus allowing legally married same-sex

spouses to receive the same FMLA protections regardless of where they reside.

On March 26, 2015, the day before the DOL's final rule became effective, the U.S. District Court for the Northern District of Texas granted a preliminary injunction sought by four states – Arkansas, Louisiana, Nebraska and Texas – effectively halting enforcement of the new rule in those states pending a final order. While the DOL has yet to issue a statement on the preliminary injunction following *Obergefell*, the U.S. Supreme Court's holding supports the new definition of "spouse" under the FMLA and now requires all states to recognize validly-performed marriages in other states. For more information about this decision and its impact on all employers, read this [legal alert](#) from the law firm Ballard Spahr, LLP.

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