

FEDERAL

Must-Reads for Every Practice

Eligible Employees in Same-Sex Marriages Would get FMLA Protections Under Proposed Rule

The Department of Labor (DOL) has issued a proposed rule extending the protections of the FMLA to all eligible employees in legal same-sex marriages regardless of where they live. The proposal is in light of the Supreme Court's decision in *United States v. Windsor* in which the court struck down the Defense of Marriage Act provision that interpreted "marriage" and "spouse" to be limited to opposite-sex marriage for the purposes of federal law.

The proposed rule would change the FMLA regulatory definition of "spouse" so that an eligible employee in a legal same-sex marriage will be able to take FMLA leave for his or her spouse or family member regardless of the state in which the employee resides. Currently, the regulatory definition of "spouse" only applies to same-sex spouses who reside in a state that recognizes same-sex marriage. Under the proposed rule, eligibility for FMLA protections would be based on the law of the place where the marriage was entered into, allowing all legally married couples, whether opposite-sex or same-sex, to have consistent federal family leave rights

regardless whether the state in which they currently reside recognizes such marriages.

The proposed definition of spouse expressly references the inclusion of same-sex marriages in addition to common law marriages, and will encompass same-sex marriages entered into abroad that could have been entered into in at least one state. Note that civil unions are not considered marriages under the FMLA. Eligible employees in same-sex civil unions, as well as opposite-sex civil unions, could still take FMLA leave for their own serious health condition, or to care for their child or parent, but they would not be eligible to take spousal leave, since a civil union is not considered a legal marriage.

The proposed rule would provide eligible employees the opportunity to take FMLA leave to care for their same-sex spouse, regardless of where they live, in these situations:

- caring for their same-sex spouse with a serious health condition;
- taking qualifying exigency leave due to their same-sex spouse's covered military service;
- taking military caregiver leave for their same-sex spouse.

With respect to the FMLA's military family leave provisions, the proposed place of celebration rule is consistent with the Department of Defense's (DOD) policy of treating all married members of the military equally.

For more information and/ or to follow

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MUST-READs (cont.)

the proposed rule visit the HR|experts page via the Medical Mutual Website and click on CCH Answers Now and see “What’s New.”

Parents May Be Eligible for FMLA Leave to Care for Adult Children

Under the Family and Medical Leave Act (FMLA), there is sometimes confusion over the right of parents to take leave to care for an adult child. Under the FMLA, for an employee’s child with a serious health condition, the criteria are different for children under 18 and adult children, who must be incapable of self-care because of a mental or physical disability. For adult children, FMLA eligibility is generally based on meeting the Americans with Disabilities Act (ADA) standards. Since the FMLA came out in 1993 the ADA has changed significantly (due to the ADA Amendments Act of 2008) and the standard for meeting the criteria for FMLA for adult children is a lower threshold. There is also a misconception that adult children must have had the mental or physical disability since they were under age 18. This is not true.

For more information on employees qualifying for FMLA leave for their adult children, see the DOL Fact Sheet at <http://j.mp/FM-AC> and or contact your HR|experts Advisor at suzanne.allen@callhrexper.com

Tips for Avoiding a Bad Hire

Issue: *Over the past year, an unusually large percentage of new hires have not worked out and have left your organization. This has been costly, especially when considering recruiting expenses, lost productivity, and the negative effect on employee morale. What can your organization do to avoid making poor hiring decisions in the future?*

Answer: The average cost of a bad hire can equal 30 percent or more of that hire’s first-year probable earnings. Fortunately, organizations can prevent the costs associated with poor hiring decisions by recognizing the challenges at different steps of the talent acquisition process. The following tips, compiled by PI Worldwide, can help organizations avoid the most common mistakes:

1. Clearly define the requirements of the role.
2. Write an accurate job description.
3. Define what makes a strong candidate.
4. Incorporate behavioral data into the screening process.

5. Conduct better interviews with data-driven, behavior-based questions.
6. Align the job offer with the candidate’s motivating needs.
7. Customize a new hire’s on boarding plan and learning objectives.

For more detailed list of the tips listed to help avoid the most common mistakes, contact Suzanne Allen, HR Advisor for HR|experts at suzanne.allen@callhrexper.com



Georgia Updates Electronic Filing Guidance

The Georgia Department of Labor (GDOL) has updated the filing specifications for filing quarterly reports electronically. Effective January 1, 2015, GDOL wage record layout will be discontinued and replaced with the NASWA Y2K record format. The acceptable forms of electronic media are: CD-ROM, DVD, USB Flash Drive, and/or Internet. 3½ inch floppy diskettes will no longer be accepted. All electronic media submitted must include a completed paper transmittal form. All electronic media submitted must be labeled externally with a contact name, GDOL account number, email address, and the reporting period. Each record submitted on the electronic media must include an eight digit GDOL account number including any leading zeros and must not include alpha or non-numeric characters.

Tax reports submitted via electronic media are referred to as “N Records.” Tax Reports/N Records for multiple employers must be submitted as individual records in one file. Wage reports for multiple employers can be submitted as individual files or they can be merged and submitted together into a single file. Each wage record must be a uniform length as specified in the NASWA Y2K record format. A valid social security number is required for each wage record submitted. Any wage record submitted without a nine digit social security number cannot be processed. A soft carriage return (line feed) must be at the end of each record. All data submitted via electronic media must be in ASCII-1 language. Rich text, UNIX, Microsoft Excel and other non ASCII-1 formats will not be processed. Tax and wage report data must be compressed in a .zip file format. If multiple employer wage reports are submitted on a single media, the individual reports must be compressed as a single file.



NORTH CAROLINA

What Must Group Health Plans Provide as Preventive Coverage for Tobacco Cessation Interventions?

Issue: The Patient Protection and Affordable Care Act (ACA) contains preventive coverage provisions that require non-grandfathered group health plans and health insurance coverage offered in the group market to provide benefits for evidenced-based items or services that have in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force (USPSTF). The USPSTF recommends that clinicians ask all adults about tobacco use and provide tobacco cessation interventions for those who use tobacco products. What are plans and issuers expected to provide as preventive coverage for tobacco cessation interventions?

Answer: Plans may use reasonable medical management techniques to determine the frequency, method, treatment, or setting for a recommended preventive service, to the extent not specified in the recommendation or guideline regarding that preventive service. Evidence-based clinical practice guidelines can provide useful guidance for plans and issuers.

The Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury will consider a group health plan or health insurance issuer to be in compliance with the requirement to cover tobacco use counseling and interventions if, for example, the plan or issuer covers without cost-sharing:

1. Screening for tobacco use; and
2. For those who use tobacco products, at least two tobacco cessation attempts per year. For this purpose, covering a cessation attempt includes coverage for:
 - Four tobacco cessation counseling sessions of at least 10 minutes each (including telephone counseling, group counseling and individual counseling) without prior authorization; and
 - All FDA-approved tobacco cessation medications (including both prescription and over-the-counter medications) for a 90-day treatment regimen when prescribed by a health care provider without prior authorization.

Source: FAQs about Affordable Care Act Implementation (Part XIX), Q5, May 2, 2014; <http://www.dol.gov/ebsa/pdf/faq-aca19.pdf>



VIRGINIA

Virginia to Establish Task Force on Worker Misclassification and Payroll Fraud

Virginia Governor Terry McAuliffe signed Executive Order 24 to establish an interagency task force on worker misclassification and payroll fraud.

“Every Virginian who works hard and follows the rules should get the pay and benefits that they deserve,” said Governor McAuliffe “This executive order will begin a process to ensure that employers throughout the Commonwealth follow the same rules when it comes to benefits and pay for their employees.”

A 2012 report of the Joint Legislative Audit and Review Commission found that one-third of audited employers in certain industries misclassify employees. These employers lower their costs by up to 40% by failing to purchase workers’ compensation insurance, failing to pay unemployment insurance and payroll taxes, or failing to comply with minimum wage and overtime laws, which places other employers at a competitive disadvantage.

Based on state and national studies, the Commission estimated that worker misclassification lowers state income tax collections by as much as \$28 million a year.

The Inter-agency Taskforce on Worker Misclassification and Payroll Fraud, made up of staff provided by each of the above agencies and chaired by the Secretary of Commerce and Trade, will be given the task of developing and implementing a comprehensive plan with measurable goals to reduce worker misclassification and payroll fraud in Virginia. Activities of the task force should include reviewing statutes and regulations; evaluating current enforcement practices; developing procedures for more effective interagency cooperation and joint enforcement; implementing a pilot project for joint enforcement; developing educational materials and an outreach strategy for employers; advising on technological improvements in worker misclassification and payroll fraud detection; and recommending any appropriate changes to relevant legislation or administrative rules. A work plan is to be developed and a report on the progress of the task force is to be presented to the governor by December 1, 2014.

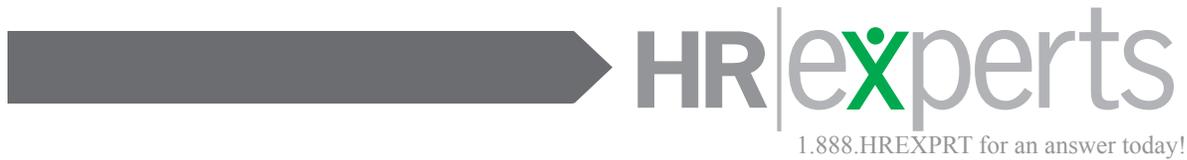
Executive Order 24 is effective as of August 14, 2014, and remains in force for one year or until superseded or rescinded.



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THE VOICE



Welcome to your Fall 2014 Voice newsletter.

The Voice provides a quarterly update on external regulations at the state and federal level that affect your practice along with timely advice on ways to respond. It is provided as a benefit to Medical Mutual members.

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