

PUBLICATION

Federal Judge Blocks Department of Labor Rule Expanding FMLA to Same-Sex Couples

March 31, 2015

On Thursday, March 26, a federal district court in the Northern District of Texas granted an injunction blocking the U.S. Department of Labor (DOL) from enacting a new rule under the Family and Medical Leave Act (FMLA) that would extend its protections to same-sex couples and common law marriages. The [decision](#) issued a stay of the new rule, which would have gone into effect the next day (Friday, March 27, 2015).

The injunction stems from a lawsuit filed by the state of Texas, and joined by the states of Arkansas, Louisiana and Nebraska, through their respective Attorney General, against the federal government regarding the DOL's recently promulgated final rule expanding the definition of "spouse" under the FMLA. The FMLA requires employers to grant leave for workers to provide care for a sick family member or after giving birth. The new rule would expand the definition of "spouse" to include same-sex couples who are lawfully married in any state that recognizes same-sex marriage, regardless of the couple's state of residency. The new rule reads:

Spouse, as defined in the [FMLA] statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual **in a same-sex or common law marriage** that either (1) was **entered into in a State that recognizes such marriages** or, (2) if entered into **outside of any State, is valid in the place where entered into and could have been entered into in at least one State**.

Texas argued that in order to comply with this new rule, it would have to violate Texas state law, which does not recognize same-sex marriage. Under Article I, Section 32 of the Texas Constitution, "(a) Marriage in this state shall consist only of the union of one man and one woman. (b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage."

The states' case relied, in part, on the recent decision in *United States v. Windsor*. There, the plaintiff, whose same-sex marriage was recognized by the state of New York, brought suit against the federal government to claim the federal estate tax exemption for surviving spouses. The Supreme Court ruled in favor of the plaintiff, holding unconstitutional Section 3 of the Defense of Marriage Act (DOMA), which defined "marriage" as "only a legal union between one man and one woman as husband and wife." However, Section 2 of DOMA, "Full Faith and Credit Statute," was not at issue in *Windsor*, and therefore remains in effect. It provides:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

As a result, the plaintiffs argued that requiring states to follow the new FMLA rule would violate Section 2 of DOMA.

In applying the federal standard to grant an injunction, the court held that the states were likely to prevail on the merits of their claim that an expansion in the FMLA's definition of spouse would force Texas employers into the position of choosing between breaking federal law or their respective state's laws. The court also held that the DOL exceeded its authority in expanding the FMLA, interpreting that Congress intended to keep a "traditional" definition of marriage. The court also found immediate irreparable harm because the rule was set to go into effect the next day and would immediately burden the states by requiring them to decide whether to change their respective state's FMLA policies and grant leave under the new rule. Moreover, there would be regulatory and compliance burdens associated with the states familiarizing themselves with the new law, maintaining benefits for employees covered by the expanded rule and administering the expanded leave programs.

This is certainly not the last word on the rule and whether or not FMLA protections will ultimately be extended to same-sex couples: the court duly anticipated that the Supreme Court will be the ultimate arbiter of this dispute.