

PUBLICATION

New Department of Labor Interpretation on FMLA Leave for Adult Children

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On January 14, 2013, The Department of Labor issued a new interpretation that clarifies its position on the ability of employees to take leave under the FMLA to care for an adult child who has a disabling medical condition.

The FMLA allows employees to take leave to care for a son or daughter with a serious health condition. However, the scope of allowable leave narrows once an employee's son or daughter reaches 18 years old. At that point, a parent is entitled to take FMLA leave when all four of the following occur:

1. the adult child has a disability as defined by the ADA;
2. the child is incapable of self-care due to that disability;
3. the child has a serious health condition; and
4. the child is in need of care due to the serious health condition.

Prior to this interpretation, there was some question as to whether the adult child's disability must have developed before the child reached 18 years of age for the parent to be eligible for FMLA leave. The Department of Labor has now clarified that the age of onset of the disability is immaterial so long as the child at issue has a disability under the ADA.

This interpretation reflects the impact of the ADAAA's expansion of the definition of "disability" on the FMLA and will enable more parents to take FMLA-protected leave to care for their adult sons and daughters with disabilities.