

## Family and Medical Leave Act Changes

*June 28, 2010*

The Family and Medical Leave Act (“FMLA”) provides up to twelve (12) weeks of job-protected leave to eligible employees for the birth, adoption or fostering of a child, for the serious health condition of the employee or for the care of a qualifying family member who has a serious health condition. It also provides job-protected leave for employees with eligible military-qualifying reasons.

On June 22, 2010, the Department of Labor clarified the meaning of child as it pertains to the birth, adoption or fostering of a child or for a child’s serious health condition. The clarification permits employees to take leave under the FMLA for children if they provide day-to-day care or financial support to those children even if they do not have a biological or legal relationship. This interpretation opens up leave rights to step families and gay and lesbian families even if the state in which they are located does not legally recognize the relationship.

For example, an employee may provide day-to-day care to the child of his or her unmarried partner and thus be eligible for leave under the FMLA. The employee does not have a legal relationship (such as a guardian) or biological relationship with the child but may be eligible under the expanded definition as an individual who stands in the place of a parent.

What does this mean for you? This expanded interpretation is a victory for nontraditional families and allows more employees to be eligible for leave for the birth, adoption or fostering of a child or to care for a child who has a serious health condition. Thus, an employee may need leave to care for a seriously ill stepchild and the employee would be eligible even if he or she is not the legal guardian or biological parent.

How does an employee prove that he or she has a relationship with a child that would qualify under the expanded definition? An employer can ask for reasonable documentation or a statement of the relationship in order to make the determination but each determination would be made on a case-by-case basis.

Keep in mind, the employee must still meet the other requirements of the FMLA before he or she is eligible. He or she must (1) work at a location with fifty (50) or more employees in a seventy-five (75) mile radius; (2) work for the company for at least one (1) year; (3) work at least 1,250 hours within the last year; **and** (4) have a qualifying event such as the birth of a child.

If you have any questions or need additional information, please feel free to contact the WorkLife HR Human Resources Department.