

## THE EMPLOYER'S LEGAL RESOURCE: HOW THE OVERTURNING OF DOMA MIGHT AFFECT YOUR FMLA ADMINISTRATION

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As you've no doubt heard in the news, the United States Supreme Court held on June 26 that the Defense of Marriage Act (DOMA) was unconstitutional. In short, the federal government cannot refuse to recognize same-sex marriages which are recognized by a state.

While this has many far-reaching implications, we will discuss one area where it will impact your work – your FMLA policy. Prior to June 26, federal laws which discussed “spouses” were interpreted to include only marriages between one man and one woman. In fact, there is a 1998 DOL Letter which states that DOMA established a federal definition of marriage as a legal union between one man and one woman. Thus, same sex spouses were not protected under the FMLA.

Now that DOMA has been declared unconstitutional, when you are trying to interpret a federal law which references “spouse” or “marriage,” you will look to the states’ definitions of “spouse” and “marriage.” Sound simple? It's not.

What if your employee was lawfully married in a state that recognizes same sex marriages but moves to a state that does not? What if your employee is married in and lives in a state that recognizes same sex marriages but commutes to work in a state that does not? Lawyers, scholars, and politicians are debating these issues now. Perhaps we will have decisions soon. Perhaps not.

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