

FMLA – BACK TO BASICS – WHO IS A COVERED FAMILY MEMBER?

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Employees who are eligible for leave under the Family and Medical Leave Act (“FMLA”) may use their FMLA entitlement for a number of qualifying reasons. One such reason is to provide physical and/or psychological care for a covered family member – specifically, a “spouse, son, daughter or parent” – with a serious health condition. So, who is included within those family relationship terms?

Spouse

- The employee’s husband or wife as defined in the State where the individual was married (or, if the marriage was entered into outside of any State, if the marriage is valid in that place and could have been entered into in at least one State)
- Includes a spouse through same-sex and common law marriages

Son or Daughter

- The employee’s biological, adopted, or foster child, stepchild, or legal ward who is either:
 - under age 18; OR
 - over age 18 and is incapable of self-care because of a physical or mental disability
- Also includes a child with respect to whom the employee stands “in loco parentis” (in the place of a parent)
 - The employee must have assumed the day-to-day responsibilities of a parent for the care and financial support of the child. Factors to consider include the child’s age and degree of dependence, the extent to which the employee exercises the general duties of parenthood, and the amount of financial support provided to the child.
- No biological or legal relationship is necessary.

- Examples provided by the U.S. Department of Labor: Employee raising child with a same-sex partner; grandparent who cares for grandchild whose parents are incapable of doing so; aunt who assumes responsibility for a child after the child's parents pass away.

Parent

- The employee's biological, adoptive, step or foster father or mother
- Also includes any other individual who stood in loco parentis to the employee when the employee was a son or daughter (see discussion of "in loco parentis" above)
- Does not include parents "in law"

Employees may be required to provide reasonable documentation confirming the family relationship. This may include a simple statement from the employee, or other documentation such as a birth certificate (which should be returned to the employee), court document, etc.

Recommended Next Steps: Employers should ensure they are sensitive to family relationships that may implicate FMLA rights even though such relationships may fall outside relationships that have traditionally been considered the "norm."

For any questions, please reach out to your Bryan Cave Leighton Paisner attorney contact.

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