U.S. Department of Labor Clarifies Definition of Son or Daughter Under the FMLA

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On June 22, the Wage and Hour Division ("WHD") of the U.S. Department of Labor issued Administrator's Interpretation No. 2010-3 (the "Interpretation") to clarify the definition of "son or daughter" under the Family and Medical Leave Act ("FMLA") as it relates to "a child of a person standing in loco parentis." The new guidance provides that an employee may be eligible for child-related FMLA leave even if there is no biological or legal relationship between the employee and child.

Background

The FMLA entitles eligible employees to take up to 12 weeks of job-protected leave to care for a son or daughter with a serious health condition or for the birth or placement of a son or daughter. The FMLA defines "son or daughter" as a "biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis."

In Loco Parentis

In loco parentis refers to the situation in which a person stands in a parental relationship with a child without the formalities of legal adoption. To determine whether the relationship of in loco parentis exists, courts look at the intention of the person claiming in loco parentis to assume the status of a parent toward the child. A number of factors are involved in the determination, including the age of the child, the degree to which the child is dependent on the person claiming to be standing in loco parentis, the amount of support provided to the child, and the extent to which other parental duties are exercised.

The Interpretation specifically states that same-sex partners who either share responsibility for the day-to-day caring for the child or provide financially for the child are entitled to take FMLA leave, as they have in loco parentis standing. Furthermore, the fact that a child has one biological parent in the home, or has both a mother and a father, does not prevent a finding that the child is the "son or daughter" of an employee who lacks a biological or legal connection to the child. Indeed, the Interpretation notes that "[n]either the statute nor the regulations restrict the number of parents a child may have under the FMLA."

Documentation

If an employer has questions about whether an employee's relationship to a child is covered under the FMLA, the employer may require the employee to provide reasonable documentation or a statement of the family relationship. A simple statement asserting that the requisite family relationship exists is sufficient in situations where an employee claims in loco parentis.