

LEGAL UPDATES

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Service

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Department of Labor Clarifies Definitions in the Family and Medical Leave Act to Extend Leave Benefits to Employees Who Have No Biological or Legal Relationship with the Child

On June 22, 2010, the Wage and Hour Division of the U.S. Department of Labor issued Administrator's Interpretation No. 2010-3 that clarifies the definition of son or daughter in the Family and Medical Leave Act (FMLA) to apply to employees who are in loco parentis (in the place of the parent) with a child. The effect of this interpretation is to extend leave benefits to employees who have no biological or legal relationship with the child.

The FMLA entitles covered employees to 12 workweeks of leave for the birth or placement of a child or to care for a child with a serious health condition. The Act defines a son or daughter to include an adopted child, foster child, step child, a legal ward, or one who is the child of someone in loco parentis with the child.

Relying on the legislative history of the FMLA, and case law interpreting the in loco parentis relationship, the Administrator interpreted the statute and regulations to include situations where the employee has neither a biological nor a legal relationship with the child so long as the employee undertakes either "day-to-day care or financial support...where the employee intends to assume the responsibilities of a parent with regard to the child."

What This Means To You

Effective immediately, qualified employees under the FMLA who have no biological or legal relationship with a child are entitled to FMLA protections if they provide reasonable documentation or a statement of family relationship

with the child. The Administrator's interpretation states that "[a] simple statement asserting that the requisite family relationship exists is all that is needed in situations such as in loco parentis where there is no legal or biological relationship." The Administrator's interpretation is attached for your reference.

Contact Information

If you have any questions about this or other employment matters, please contact your Husch Blackwell Sanders attorney.

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