



## **Department of Labor Defines “Son or Daughter” Under FMLA**

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The Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of leave for three reasons related to a son or daughter. Namely, those three reasons include: 1) to care for a son or daughter with a serious health condition; 2) the birth of a son or daughter and in order to care for them; and 3) the placement of a son or daughter with the employee for adoption or foster care.

In June, 2010, the Department of Labor issued an Administrative Interpretation clarifying the definition of son or daughter under the FMLA. This interpretation ultimately grants leave rights to individuals, who regardless of whether there is a legal or biological relationship to the child, assumes the responsibilities of a parent by providing day-to-day care *or* financial support for a child. This definition encompasses not only biological or adopted children, but also foster kids, stepchildren, legal wards and children of employees who serve as if they were parents (in loco parentis).

The FMLA defines “in loco parentis” as “those with day-to-day responsibilities to care for and financially support a child .. [a] biological or legal relationship is not necessary”. Accordingly, the protections of leave under the FMLA for the above three reasons extends to grandparents, aunts, uncles, partners and others who assume the responsibilities of raising a child.

Each relationship is determined on a case by case basis. As such employers may need to substantiate a relationship by requiring the employee provide “reasonable” documentation or a statement regarding such relationship. However, the Department of later stated 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”.

As a result of this broadly construed coverage, more employees may be entitled to take FMLA leave to care for or be present for the birth or an adoption of a “son or daughter”. If you need assistance in reviewing and revising your FMLA policies to comply with this interpretation or for assistance with any leave-related issue, please contact Rajkowski Hansmeier.

*This article is a general discussion of legal topics and is not intended to be legal advice. Please contact Jessie L. Becker if you wish to discuss the impact of the matters discussed in this article on your particular situation.*