

July 2, 2010

MEMORANDUM #094-10

TO: Agency Administrators
FROM: Bobbie Chappell
VIA: Stephen Presnell
SUBJECT: **New changes in the Family Medical Leave Act (FMLA)**

As you know, the definition of “son or daughter” under the FMLA includes not only a biological or adopted child, but also a “foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis”. Therefore, for the purposes of FMLA leave, the fact that an employee does not have a biological or legal relationship to a child does not necessarily prevent a finding that such child is the “son or daughter” of an employee, if the employee is found to stand in loco parentis.

On June 23, 2010, the Department of Labor issued an interpretation letter No. 2010-3 providing clarification of the definition of “son or daughter” under Section 101(12) of the Family and Medical Leave Act (FMLA) as it applies to an employee standing in loco parentis to a child. As a result, it is our understanding that:

- The fact that a child has a biological/adoptive parent in the home, or has both a mother and a father, does not prevent a finding that such child is also the “son or daughter” of an employee who stands in loco parentis, for purposes of taking FMLA leave. The interpretation clearly states that, “Neither the statute nor the regulations restrict the number of parents a child may have under the FMLA”. Furthermore, based on the above interpretation:
 - The regulations do not require an employee to establish that he or she provides both day-to-day care and financial support in order to be found to stand in loco parentis to a child for purposes of family medical leave.

Example: An employee provides day-to-day care for his or her unmarried partner’s child (with whom there is no legal or biological relationship) but does not financially support the child. The employee could still be considered to stand in loco parentis to the child and therefore be entitled to FMLA leave to care for the child if the child had a serious health condition.

- The same principles apply to leave for the birth of a child and to bond with a child within the first 12 months following birth or placement (parental leave).

Example - An employee who will share equally in the raising of a child with the child's biological parent would be entitled to leave for the child's birth because he or she will stand in loco parentis to the child. Similarly, an employee who will share equally in the raising of an adopted child with a same sex partner, but who does not have a legal relationship with the child, would be entitled to leave to bond with the child following placement, or to care for the child if the child had a serious health condition, because the employee stands in loco parentis to the child.

- The employer may require the employee to provide reasonable documentation or statement of a family relationship. A simple statement asserting that the requisite family relationship exists may be all that is needed in situations such as in loco parentis where there is no legal or biological relationship. (In other words, apply the same standard you would for any other employee who requests family medical or parental leave.
- While this interpretation clarifies the definition of a son or daughter as it applies to in loco parentis, there is no change in the definition of spouse. FMLA is not available to care for a domestic partner.

Here is the link to the interpretation letter for your review:

http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm

If you have additional questions, please contact Bobbie Chappell at 850-488-2415 extension 249 or via email at BobbieC@jac.state.fl.us.

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