

## DOL Interpretation Expands the Scope of “Parents” Eligible to Take FMLA Leave

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On June 22, the U.S. Department of Labor (DOL) significantly increased the number of employees who will be eligible to take Family and Medical Leave Act (FMLA) leave to care for a child, by broadening the definition of who constitutes a “son or daughter” under the Act. As a result, domestic partners and other individuals who may not have previously been considered a qualifying parent of a child will now be deemed to meet this revised definition and be entitled to FMLA leave.

As it has done several times this year with regard to Fair Labor Standards Act issues, the DOL acted by issuing an Administrator’s Interpretation. This latest interpretation (No. 2010-03) broadens the meaning of “son or daughter” as it applies to an employee who stands *in loco parentis* to a child. *In loco parentis* commonly refers to an individual who has assumed the position and the obligations of a parent without going through formal legal channels.

Enacted in 1993, the FMLA provides eligible employees with up to 12 workweeks of unpaid leave “for the birth or placement of a son or daughter, to bond with a newborn or newly placed son or daughter or to care for a son or daughter with a serious health condition.”<sup>1</sup> The FMLA defines “son or daughter” to include “biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*.” An individual standing *in loco parentis* can include a person without a biological or legal relationship to the child.

The FMLA regulations define employees standing “*in loco parentis*” to “include those with day-to-day responsibilities to care for and financially support a child.”<sup>2</sup> Traditional interpretation of this section considered *in loco parentis* standing to be dependent upon providing a child with both financial support and day-to-day care. However, the DOL’s new interpretation appears to rely on the word “include” to allow for *either* day-to-day care *or* financial support to establish an *in loco parentis* relationship, including a scenario where an employee *intends* to assume the responsibilities of a parent.

The DOL’s Wage and Hour Division Deputy Administrator Nancy J. Leppink explained that whether an employee is standing *in loco parentis* will depend on the particular facts of a situation, emphasizing that “the fact that a child has a 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

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<sup>1</sup> 29 U.S.C. § 2611(12).

<sup>2</sup> 29 C.F.R. § 825.122(c)(3).



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