

FMLA

**By Reg P. Wydeven
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One of my daughter's best friends was born in Russia. My wife and I went to high school with her parents, and when we had their family over one night they shared with us the story of her adoption. They had put together a beautiful scrapbook containing pictures of their daughter's orphanage, biological parents, hometown and other local landmarks.

The long and arduous process of adopting a baby from a foreign country is a difficult and trying process. Like labor, any parent will quickly tell you that it is all worth it in the end, but the ride is hard. Our friends had to travel to the other side of the world twice, both times not knowing whether the adoption would be approved or not. Accordingly, they gladly put their lives on hold to travel to Russia at the adoption agency's beck and call. Thankfully the Family and Medical Leave Act specifically allows employees to take a leave of absence from their jobs to address family issues, including adoption.

The FMLA was passed in 1993 and is administered by the Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor. The FMLA provides covered employees with up to 12 weeks of job-protected, unpaid leave during any 12-month period. Upon returning from FMLA leave, the employee must be restored to her original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

The employee can take the leave for any of the following reasons: (1) the birth and care of the employee's child, or the placement for adoption or foster care of a child with the employee; (2) the care of an immediate family member (such as a spouse, child, or parent) who has a serious health condition or exigent circumstances surrounding an immediate family member's military service; or (3) the care of the employee's own serious health condition. While the employee is on FMLA leave, the employer is required to maintain the employee's group health benefits.

In certain situations, the employee may take FMLA leave intermittently by taking leave in separate blocks of time for a single qualifying reason or by reducing the employee's usual weekly or daily work schedule. Historically, the rights granted under the FMLA have only been available to heterosexual couples.

Last week, however, the Department of Labor announced it will issue regulations requiring employers to provide gay employees with equal treatment under the FMLA. Two weeks ago I wrote about how the FDA will be reexamining the ban of gays from donating blood. The extension of FMLA benefits to gay couples is the latest of President Obama's efforts to increase gay's rights, such as attempting to repeal the ban on gays and lesbians serving openly in the military. Earlier this month President Obama issued orders for government agencies to extend child care services and expanded family leave to their workers.

Interestingly, the expansion of FMLA rights to gay employees by the Department of Labor is based on a new interpretation of existing law. In other words, Congress has not changed the FMLA, rather the Labor Department, under President Obama's administration, reapplied the law. This means that under future presidential administrations, the Department may very well change the FMLA back and revoke the expansions given to gay employees.