

Corporate & Financial Weekly Digest

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[DOL Expands Employees Who May Qualify for FMLA Leave](#)

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The Family Medical Leave Act (FMLA) allows qualified employees to take up to 12 weeks of unpaid, job-protected leave in order, among other things, to care for a child postpartum, to bond with a child after adoption, or to care for a child with a serious illness. In a recent Administrator's Interpretation, the U.S. Department of Labor (DOL) expanded the category of people who may qualify for leave in this context.

The FMLA entitles an employee to leave in certain childcare situations where the employee is standing *in loco parentis*, or in the place of the parent. In such a case, a legal or biological relationship between the child and the caregiver is not required. A previously promulgated FMLA regulation defined being *in loco parentis* as both providing day-to-day care of the child and financially supporting the child.

However, the Interpretation requires only one or the other in order to qualify for leave under the FMLA. Converting what was formally a two-part test to a one-part test will lead to more people qualifying for leave in an *in loco parentis* backdrop.

Such an Interpretation by the DOL is not binding on courts, but it is entitled to deference. While it remains to be seen how the courts will deal with this Interpretation, which, on its face, seems inconsistent with the regulation, employers should be mindful of it for a few reasons.

For instance, an employer should consider more carefully whether an employee who requests leave, but who is not a part of a traditional parent-child circumstance, is entitled to the leave. Along these lines, the Interpretation permits an employer to "require the employee to provide reasonable documentation or statement of the family relationship." Note that only a "simple statement" is required and employers should be cautious not to be too rigorous in their requirements lest they find themselves accused of putting a chilling effect on requests for leave, or worse, harassment.

Employers should also be mindful that the recent Interpretation may lead to a considerable increase in requests for FMLA leave.

The full text of the Interpretation, which provides a few helpful examples, is available [here](#).

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