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USDOL Expands Applicability of FMLA Leave for Parents

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On June 22, 2010, the United States Department of Labor ("USDOL") Wage and Hour Division issued Administrator's Interpretation No. 2010-3 (the "Interpretation"), which clarifies the definition of "son or daughter" under the Family and Medical Leave Act ("FMLA"), as it applies to employees standing "in loco parentis," or "in the place of a parent," to a child. A copy of the Interpretation can be found here.

The FMLA entitles an eligible employee to take up to twelve (12) weeks of job-protected leave upon the birth of a son or daughter, the placement of a son or daughter with the employee for adoption or foster care, or to care for a son or daughter with a serious health condition. See 29 U.S.C. § 2612(a)(1)(A)-(C); 29 C.F.R. § 825.200. The FMLA defines son or daughter as including a child of a person standing in loco parentis who is either under 18 years old or older than 18, but incapable of self-care due to a disability. In this Interpretation, the USDOL noted that the FMLA regulations define "in loco parentis" as including those with day-to-day responsibilities to care for and financially support a child. See C.F.R. § 825.122(c)(3). However, the Administrator announced in its interpretation of the regulation that either day-to-day care or financial support may establish an in loco parentis relationship, so long as the individual intends to assume the responsibilities of a parent with regard to a child; it is not necessary for an employee to establish both in order to be found to stand in loco parentis. The Administrator further acknowledged that a determination of in loco parentis status to a child is to be made on a case-by-case basis.

Employers should consult counsel with any questions regarding the proper application of FMLA guidelines and/or regulations in order to ensure appropriate action is taken with respect to each unique familial circumstance.

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