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Guidance & Solutions for Employers

Illinois Civil Union Partners Soon May Enjoy Greater Leave Rights Than Married Couples Under a Newly Proposed Illinois Family Medical Leave Act

Posted by [Jeff Nowak](#) March 08, 2012



Illinois currently has no equivalent of the federal Family and Medical Leave Act. Soon, it may. And unlike the FMLA, the proposed Illinois leave law would allow civil union partners the same leave entitlements currently enjoyed by married couples. Notably, because of the conflicting parameters of state and federal law, the proposed [Illinois Family and Medical Leave Act](#), which recently hit the floor of Illinois House of Representatives, actually would afford civil union partners *greater* leave benefit rights than married couples.

Let me explain.

The [Illinois Religious Freedom Protection and Civil Union Act](#), which became law on June 1, 2011, provides that partners in a civil union are entitled to the same rights, benefits and privileges as those in traditional marriages. Under this Act, wherever the term "spouse" appears within any Illinois statute, it must be read to include "partners in a civil union."

Like its federal counterpart, the Illinois FMLA would extend leave benefits to "spouses." Because "civil union partners" are now the equivalent of "spouses" in Illinois under the Civil Union Act, civil union partners would be able to take leave to care for their civil union partner under the Illinois FMLA.

This leaves employers with operations in Illinois in a bit of an inadvertent quandary. Currently, civil union partners cannot utilize leave rights under the federal FMLA because it is governed by the Defense of Marriage Act (DOMA), which defines marriage as between one man and one woman. So, if an employee in a civil union takes leave to care for his/her partner under the proposed Illinois FMLA, it would count against the leave entitlement under Illinois law, but not under the FMLA.

To illustrate, let's pretend I am your employee and a partner to a civil union. I also am otherwise eligible for leave under the FMLA and the proposed Illinois FMLA (meaning, I have worked for you for 12 months and have worked 1,250 hours in the past 12 months). If I take a two-week leave of absence to care for my partner with a serious health condition, I will have exhausted two weeks of *Illinois* leave, but I have not exhausted any portion of my 12 weeks of *FMLA* leave (because FMLA, of course, does not recognize my civil union). In theory, I could take up to 24 weeks of leave in a 12-month period -- 12 weeks under the Illinois FMLA to care for my civil union partner, and 12 weeks for any eligible reason under the FMLA.

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If the Illinois FMLA becomes law, we will advise employers further. In the meantime, let me address a more immediate issue. Over the past several years, I have counseled employers who voluntarily have chosen to provide federal FMLA leave to domestic and civil union partners. Clearly, this is a growing phenomenon among [Fortune 500 companies and leading business](#).

Keep in mind as you develop these FMLA leave policies: if your policy provides employees leave to care for a domestic or civil union partner, employers *cannot* count this leave under the employee's 12-week FMLA allotment, since (as noted above) the FMLA does not recognize these relationships. To ensure that you are not unintentionally setting yourself up for an FMLA interference claim when providing leave to domestic or civil union partners, we recommend that employers contact their employment counsel for guidance as to best practices in this area.

Tags: [civil union partner](#), [Defense of Marriage Act](#), [eligibility](#), [Illinois Family and Medical Leave Act](#), [Illinois Religious Freedom Protection and Civil Union Act](#), [legislation](#), [spouse](#)

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