

U.S. Department of Labor clarifies FMLA definition of 'son or daughter'

Because Liberty Mutual Group Benefits is committed to providing the highest caliber of service to our customers, we wanted to share this important information from the U.S. Department of Labor (DOL). The DOL recently clarified the definition of "son or daughter" under the Family and Medical Leave Act (FMLA) to ensure that an employee who assumes the role of caring for a child receives parental rights to family leave regardless of the legal or biological relationship.

What does this clarification mean?

The interpretation clarifies that FMLA rights, which allow workers to take up to 12 weeks of unpaid leave during any 12-month period to care for loved ones or themselves, extend to the various parenting relationships that exist in today's world. The DOL interpretation uses a legal term, "in loco parentis," to expand their definition of eligible individuals.

What is in loco parentis?

In loco parentis refers to "a person who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formalities necessary to legal adoption. It embodies the two ideas of assuming the parental status and discharging the parental duties."

When does an employee qualify?

According to the administrator's interpretation ... "Congress intended the definition of 'son or daughter' to reflect 'the reality that many children in the United States today do not live in traditional 'nuclear' families with their biological father and mother. An employee who actually has day-to-day responsibility for caring for a child is entitled to leave even if the employee does not have a biological or legal relationship to that child."

Neither the statute nor the regulations restrict the number of parents a child may have under the FMLA. For example, if a child's biological parents divorce and each parent remarries, the child will be the son or daughter of the biological parents and the stepparents; and all four adults would be able to take FMLA leave to care for the child.

In contrast, an employee who cares for a child while the child's parents are on vacation would not be considered to be in loco parentis to the child.

What proof does an employee need to qualify for in loco parentis status?

A simple statement asserting that the requisite family relationship exists is all that is needed where there is no legal or biological relationship.

When does this interpretation letter take effect?

The DOL issued its interpretation letter on June 22, 2010, with the clarification taking effect immediately.

Has this clarification changed how Liberty Mutual Group Benefits administers FMLA?

No. Liberty Mutual Group Benefits is already administering FMLA in the manner described in the DOL clarification. For more information, please contact your service representative, or visit Liberty Mutual's Leave Services Web site at www.libertymutualgroup.com/FML.

In loco parentis examples:

- An employee provides day-to-day care for his or her unmarried partner's child but does not financially support the child. The employee is entitled to FMLA leave.
- An employee shares equally in the raising of a child with the child's biological parent. The employee would be entitled to leave.
- An employee who will share equally in the raising of an adopted child with a same sex partner, but who does not have a legal relationship with the child, would be entitled to leave to bond with the child following placement.

