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Wisconsin's Family and Medical Leave Act Extended to Cover Domestic Partnerships

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On June 29, 2009, Governor Doyle signed the Wisconsin state budget into law. Of particular importance to Wisconsin employers with 50 or more employees is the amendment of the Wisconsin Family and Medical Leave Act ("WFMLA") contained within the budget that extends WFMLA leave rights to registered and unregistered domestic partners.

Under the amended WFMLA, employers must provide up to two weeks of leave to employees to care for their domestic partners or to care for a parent of their domestic partners when either suffers from a serious health condition. WFMLA leave rights do not extend to the children of an employee's domestic partner. Therefore, an employee is not entitled to leave under the WFMLA to care for a domestic partner's child, whether for a serious health condition or following the birth or adoption of the child.

Domestic partnerships can be same-sex or opposite-sex relationships. Wisconsin defines domestic partnerships as either registered or unregistered. WFMLA leave rights for unregistered domestic partnerships took effect on June 30, 2009. Registered domestic partnership leave rights take effect August 1, 2009. To become a registered domestic partnership, the partners must register their partnership with the Register of Deeds in the county in which they reside, and certify that:

- Each is at least 18 years of age and otherwise competent to enter into a contract;

- Neither is married to, or in a domestic partnership with, another individual;
- They share a common residence;
- They are not nearer of kin to each other than second cousins, whether of the whole or half blood or by adoption; and
- They are of the same sex.

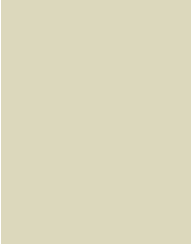
To qualify as unregistered domestic partners, the partners must satisfy all of the conditions of a registered domestic partnership, with two exceptions. First, unregistered domestic partners need not be members of the same sex. Second, the individuals entering into the domestic partnership may be first cousins in very limited situations. Unregistered domestic partners must also satisfy the following conditions:

- They must consider themselves to be members of each other's immediate families; and
- They agree to be responsible for each other's basic living expenses.

Whether individuals should be deemed unregistered domestic partners under the WFMLA will likely be a difficult inquiry for employers. Specifically, the law provides no guidance as to how an employer can determine whether an employee considers his or her domestic partner a member of his or her immediate family and whether the partners have agreed to be responsible for each other's basic living expenses. Employers will have to make these examinations carefully, with regard to employees' privacy rights.

It is imperative that Wisconsin employers subject to the WFMLA update their FMLA policies and forms in light of these latest amendments. To assist employers, the Wisconsin Department of Workforce Development has issued a new poster outlining the new leave rights, which can be accessed by clicking:

http://www.dwd.state.wi.us/dwd/publications/erd/pdf/erd_7983_p.pdf



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