

# Tread Lightly Texas: Defining "Spouse" Under the FMLA

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**Nathaniel M. Glasser**, a Member of the Firm in the Labor and Employment practice, in the firm's Washington, DC, office, and **August Emil Huelle**, an Associate in the Employee Benefits and Labor and Employment practices, in the firm's New York office, authored an article in *Law360*, titled "Tread Lightly Texas: Defining 'Spouse' Under the FMLA." (*Read the full version — subscription required.*)

Following is an excerpt:

In *U.S. v. Windsor*, the U.S. Supreme Court struck down Section 3 of the Defense of Marriage Act as unconstitutional, finding Congress did not have the authority to limit a state's definition of "marriage" to "only a legal union between one man and one woman as husband and wife." Significantly, the Windsor decision left intact Section 2 of DOMA, which provides that no state is required to recognize same-sex marriages from other states. Following the Windsor decision, President Obama issued a directive to implement the Windsor decision in all relevant federal statutes. In accordance with the directive, in June 2014, the DOL proposed rule-making to update the regulatory definition of spouse under the FMLA. The final rule is the result of that endeavor.

The final rule adopts the place-of-celebration rule, thus amending prior regulations which followed the place-of-residence rule to define "spouse." For purposes of the FMLA, the place-of-residence rule determines spousal status under the laws where the couple resides, notwithstanding a valid out-of-state marriage

## People



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license. The place-of-celebration rule, on the other hand, determines spousal status by the jurisdiction in which the couple was married, thus expanding the availability of FMLA leave to more employees seeking leave to care for a same-sex spouse.