



The Impact of Expanding Leave Rights to Care for Children of Same-Sex Partners

The U.S. Department of Labor (DOL) has expanded its scope of the Family and Medical Leave Act (FMLA) to allow employees to be allowed unpaid leave to care for the children of unmarried same-sex partners, but does not extend this unpaid leave to care for ill unmarried same-sex partners. This research brief uses data sources to estimate the number of families currently affected by the new ruling and those that would be affected if the FMLA expanded these rights to unmarried same-sex partners.

Introduction

The U.S. Department of Labor (DOL) recently clarified that the Family and Medical Leave Act (FMLA) will allow an employee to take unpaid leave to care for the children of the employee's same-sex partner. Employees will be allowed to take up to 12 weeks of unpaid leave when those children are born, adopted, or ill, even if the employee has not legally adopted the children of the partner.

Estimates based on data from the U.S. Census Bureau's American Community Survey and the Bureau of Labor Statistics suggest that as many as 51,000 families will be affected by the new ruling. Approximately 102,000 children will now have access to a second parent's time to care for them as a result of the DOL ruling.

It is possible that additional children may be affected. For instance, a child may have two lesbian, gay, bisexual, or transgender parents who do not live together and would not be counted in this report, which relies upon Census data of cohabiting couples.

However, the ruling does not change the fact that an employee cannot now take unpaid leave under the FMLA to care for an ill same-sex partner. If the federal law were revised to allow employees to take unpaid leave to care for their same-sex partners, approximately 430,000 individuals would gain the ability to provide greater levels of care for their same-sex partners. In that case, 215,000 families would be affected.

Calculations

There are 565,000 same-sex couples in the United States according to the 2008 American Community Survey (ACS), or 1,130,000 individuals. According to the 2008 ACS, 81% of individuals in same-sex couples are employed. Of employed people, approximately 47% are covered by the FMLA and are eligible for its benefits.

The DOL clarification will allow a person with a same-sex partner to take FMLA to care for the employee's partner's children. About 21.2% of same-sex couples are raising children in their households. No data exist on the proportion of same-sex couples' children who have a legal relationship with a second parent. But a scenario in which every couple that is raising children has only one legal parent would provide the high end of the likely range of families affected by this new ruling. At least one parent is employed in 92% of same-sex couples raising children. Multiplying these proportions gives the estimated number of families affected: 21.2% of the 565,000 couples multiplied by 0.47 and then by 0.92 equals 49,538. Therefore, as many as 51,000 families would be affected by the new ruling.

When same-sex couples are raising children in their households, on average they have two children. Therefore, as many as 102,000 children have gained the ability to have the care of a second parent with the Department of Labor ruling.

To estimate the number of people affected by an expansion of the FMLA to allow leave to care for an unmarried same-sex partner, multiply 1,130,000 by 0.81 (the proportion employed) and by 0.47 (the proportion covered and eligible for FMLA leave) gives the number of employed people who have same-sex partners and who could (in theory and perhaps in the future) be covered by the FMLA to care for their partners: approx. 430,000 people.

¹ United States Department of Labor, Wage and Hour Division, "Administrator's Interpretation No. 2010-3." June 22, 2010. http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf

² Table B11009: Unmarried-Partner Households. American Community Survey, 2008, U.S. Census Bureau Web site. <http://factfinder.census.gov/>. Accessed May 5, 2010.

³ Special analyses conducted by Gary J. Gates, Ph.D., Williams Institute, UCLA School of Law, using the United States Census American Community Survey (2008) Public Use Microdata Sample files.

⁴ Jane Waldfogel, "Family and Medical Leave: Evidence from the 2000 surveys," *Monthly Labor Report*, September 2001, <http://www.bls.gov/opub/mlr/2001/09/art2full.pdf>.

⁵ Special analyses conducted by Gary J. Gates, Ph.D., Williams Institute, UCLA School of Law, using the United States Census American Community Survey (2008) Public Use Microdata Sample files.

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