



HR eXTRA

Labor & Employment Relations Update

August 2009

DOMESTIC PARTNERS NOW HAVE RIGHTS UNDER THE WISCONSIN FMLA

The Wisconsin Legislature and Governor Doyle recently modified the Wisconsin Family and Medical Leave Act ("WFMLA") to treat same-sex "registered domestic partners" and same-sex and opposite sex "unregistered domestic partners" similarly to how the WFMLA treats spouses. The WFMLA leave entitlements for "unregistered domestic partnerships" became effective on June 30, 2009. The leave entitlements for "registered domestic partnerships" became effective on August 1, 2009.

Change in Leave Entitlements

Prior to this change, the WFMLA required employers with at least 50 employees to provide the following types of leave to employees on an annual basis:

1. 6 weeks of "bonding" leave for the birth or adoption of an employee's child;
2. 2 weeks of leave for the serious health condition of the employee; and
3. 2 weeks of leave for the serious health condition of the employee's parent (including the parent of the employee's spouse), spouse or child.

The revised WFMLA did not change the "bonding" leave described in item 1. above, or the leave for the employee's own serious health condition described in item 2. However, for purposes of the leave described in item 3., an employer will have to treat a domestic partner the same as a spouse. That is, an employee will be able to take up to 2 weeks of leave per year to care for a domestic partner, and up to 2 weeks of leave per year to care for his/her domestic partner's parent.



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Timothy Stewart is an attorney at our Metro Milwaukee Office in Brookfield with an extensive practice in employee benefits matters. Mr. Stewart regularly works with all types of retirement plans including 401(k), profit sharing, employee stock ownership plans (ESOPs) and traditional defined benefit pension plans. Usually, the work associated with these plans involves plan document compliance, fiduciary issues, prohibited transactions, IRS filings (such as determination letter requests) and helping to correct mistakes made by

the plan administrator. Significantly, Mr. Stewart and our firm have partnered with other ESOP service-providers (an ESOP valuation company and an ESOP record keeper) to provide a cohesive and exhaustive team of experts to employers who sponsor ESOPs.

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**Save the Dates!
DeWitt Ross & Stevens
Upcoming HR Roundtable
Seminars**

Be sure to mark your calendar for upcoming HR Roundtable seminars. The September seminar is entitled "Looking Back and Looking Ahead: An Update on Key Changes in Employment Law."

**Madison
Concourse Hotel**
September 17
November 18

**Brookfield
Brookfield Suites**

**"Registered" vs. "Unregistered"
Domestic Partnerships**

The new leave entitlements apply to employees who are in either a "registered domestic partnership" or an "unregistered domestic partnership." "Registered domestic partners" are two individuals who meet the following:

1. Each individual is at least 18 years old and competent to enter into a contract;
2. The individuals live together;
3. Neither individual is married to, or in a domestic partnership with someone else;
4. The individuals are not nearer of kin to each other than second cousins, whether of whole or half blood or by adoption;
5. The individuals are members of the same gender; and
6. The individuals are registered as domestic partners.

To register as domestic partners, the couple must: (a) apply for a declaration of domestic partnership to the Clerk of Court in the appropriate county; and (b) file a declaration of domestic partnership with the Register of Deeds.

To be considered an "unregistered domestic partnership" (which does not require any registration with the State), the following must be met:

1. The individuals are each at least 18 years old and legally competent to enter into a contract;
2. The individuals live together;
3. The individuals are not related by blood in any way that would prohibit marriage under the Wisconsin Code;
4. The individuals consider themselves to be members of each other's immediate family; and
5. The individuals must agree to be responsible for each other's basic living expenses.

What Should an Employer Do Now?

We suggest that the first thing each employer should do is replace its current WFMLA poster with the updated one that can be found at:

<http://www.dwd.state.wi.us/dwd/posters.htm>. Then, we recommend changing your written FMLA Policy to incorporate the domestic partner relationship. However, when making this change, you should make sure that you do not inadvertently apply this new Wisconsin law such that

September 16
November 17

**Janesville
Pontiac Convention Center**
September 15
November 19

Get up-to-date information
and register to attend any of
these seminars on the
events page of our website:
<http://www.dewittross.com/>.

the reader believes it also applies to the federal FMLA.
That is, if you did not address these two laws separately in
your Policy before, there is even more reason to do so now.

If you have any questions regarding this matter, or any
matters pertaining to the Wisconsin or federal FMLA, please
do not hesitate to contact Timothy L. Stewart at (262) 754-
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