U.S. Department of Labor Applies Family and Medical Leave Act to Domestic Partners Who Care For, or Financially Support, Children

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Employment lawyers used to say that the Federal Family and Medical Leave Act ("FMLA") does not apply to "in-laws" or "live-ins." That is no longer true. In an opinion letter released on June 22, 2010, the U.S. Department of Labor indicated for the first time that domestic partners acting in the nature of a parent will be eligible for protection under FMLA.

The FMLA enables eligible employees of a covered employer to take up to 12 work weeks of unpaid leave for activities which include caring for a seriously injured child or for a newborn or newly adopted child. Employees protected under FMLA must be allowed to return to their job after their statutorily-protected leave of absence. This type of leave has always been available to parents and those acting "in loco parentis," which literally means "in the place of a parent."

Many factors go into the determination of whether an employee is acting in the nature of a parent. Notably, the Department's June 22 nd opinion stated that, in order to be found to be acting in loco parentis, an employee could either have day-to-day responsibility to care for the child ***or*** financially support the child. It is not a requirement that both day-to-day care and financial support be proven in order to qualify for FMLA protection. Further, the fact that the child has a biological parent does not prevent a domestic partner who fits this criterion from being entitled to unpaid leave under FMLA.

For more information on this or other employment-related issues, please contact Sharon Stiller, Esq. at (585) 218-9999 or your regular attorney contact at our firm. Thank you.