

# AFTER DOMA

## WHAT IT MEANS FOR YOU

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

### Keep in Mind:

- The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- The ruling striking down DOMA will not be effective until 25 days from the decision. Even when effective, federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who are on certain public benefits, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

This Guidance is intended to provide general information regarding major areas of federal marriage-based rights and protections based on how the various federal agencies have administered federal benefits. ***It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.*** Past practice is no guarantee of future developments. While laws and legal procedure are subject to frequent change and differing interpretations in the ordinary course, this is even more true now as the federal government dismantles DOMA and extends federal protections to same-sex couples. None of the organizations publishing this information can ensure the information is current or be responsible for any use to which it is put.

No tax advice is intended, and nothing therein should be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Contact a qualified attorney in your state for legal advice about your particular situation.

## FAMILY AND MEDICAL LEAVE ACT FOR NON-FEDERAL EMPLOYEES

The Family and Medical Leave Act (FMLA) provides important protections for eligible workers. It allows them to take up to 12 weeks of unpaid leave in a 12-month period to care for a spouse with a serious medical condition, or 26 weeks to care for an eligible servicemember spouse with a serious injury or illness. It also allows an employee to take job-protected leave for the birth or adoption of a child or to care for a child who has a serious health condition, regardless of whether the child is biologically related to the employee. At the end of the FMLA leave, workers are entitled to resume their same or an equivalent job.

This guidance addresses the rights that non-federal employees and their same-sex spouses should expect to receive under the FMLA now that the Defense of Marriage Act (DOMA) has been struck down. Rules for federal employees differ slightly. See the guidance section on Federal Employees for information specific to employees of the federal government. You may also have additional rights under state law. For more information, consult with a lawyer who specializes in employment law about rights you may have in your state.

### Who qualifies for FMLA leave?

Any employee who has worked for a covered employer at least 1,250 hours during the 12-month period before the start of the leave is eligible for FMLA leave, so long as the employee has worked for a covered employer for at least a year.

### Which employers are covered by the FMLA?

The FMLA covers:

- Public employers, including state, local or federal government, or a public school. See the guidance for Federal Employees for more information specific to FMLA coverage for federal civilian employees.
- Private sector employers with 50 or more employees working for at least 20 workweeks (within a 75-mile radius of their worksite, if the employer has more than one worksite) in the current or preceding calendar year.

### How does being married matter for FMLA leave?

The FMLA allows eligible employees of covered employers to take unpaid leave to care for a spouse who has a serious health condition. There are additional and sometimes expanded leave rights for spouses of current and former servicemembers.

This series of fact sheets produced together by:

American Civil Liberties Union | Center for American Progress | Family Equality Council | Freedom to Marry | Gay & Lesbian Advocates & Defenders  
Human Rights Campaign | Immigration Equality | Lambda Legal | National Center for Lesbian Rights | National Gay and Lesbian Task Force | OutServe-SLDN.

### How do I apply for FMLA leave?

If you want to use FMLA leave, you must give 30 days advance notice to your employer if possible. Where that's not possible, you must let your employer know as soon as you can. If you need to miss work under FMLA leave without advance notice, you need to follow the usual notification procedures for absences from work. You also will need to give enough information to your employer for your employer to decide whether the FMLA applies to your situation. If you encounter problems, you can contact the Wage and Hour Division at the Department of Labor, or an attorney who specializes in employment law.

To find the Wage and Hour Division office nearest you, go to: [www.dol.gov/whd/america2.htm](http://www.dol.gov/whd/america2.htm).

### Which non-federal employees will be recognized as married for FMLA leave?

- **If you live in a state that respects your marriage:** You will be considered married for FMLA purposes, and will be entitled to take FMLA leave to care for a sick spouse.
- **If you live in a state that does not respect your marriage:** Existing regulation looks to the law of the employee's "place of domicile" (state of primary residence) to determine whether a person is a spouse for FMLA purposes. This means that, until the regulation is changed, if you are a non-federal employee, you are unlikely to be considered a spouse for FMLA purposes, even if you used to live in a state that respected your marriage. However, the federal government may take steps to use a "place of celebration" rule so that a spousal status is assessed according to the law of the state where you married or secured a spousal status. This process may take some time. We are working to ensure that the federal government respects married couples wherever possible. If you encounter problems, contact one of the legal organizations listed below.

### How can I find out more about FMLA rights of non-federal employees?

See Department of Labor, Wage and Hour Division, Family and Medical Leave Act: [www.dol.gov/whd/fmla/#.UJRK2Ib-ocs](http://www.dol.gov/whd/fmla/#.UJRK2Ib-ocs).



## FOR MORE INFORMATION, CONTACT

### AMERICAN CIVIL LIBERTIES UNION

[aclu.org/lgbt](http://aclu.org/lgbt)

### GAY & LESBIAN ADVOCATES & DEFENDERS

[glad.org](http://glad.org)

### LAMBDA LEGAL

[lambdalegal.org](http://lambdalegal.org)

### NATIONAL CENTER FOR LESBIAN RIGHTS

[nclrights.org](http://nclrights.org)

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