TEXAS HOLD 'EM: TEXAS COURT BLOCKS FINAL FMLA SPOUSAL RULE

On February 25, 2015, we reported the U.S. Department of Labor ("DOL") had announced a Final Rule to update existing FMLA regulations, which would provide eligible employees in same-sex marriages the same rights and protections under the FMLA as employees in opposite-sex marriages currently enjoy. The Final Rule was scheduled to take effect March 27, 2015.

INJUNCTION ISSUED

The day before the rule was set to take effect, U.S. District Judge Reed O'Connor issued orderan requiring the DOL to stay application of the Final Rule in response to a request for preliminary injunction made collectively by the states of Texas, Arkansas, Louisiana and Nebraska. The states had argued that their respective state laws prohibit same-sex marriage and that the DOL exceeded its jurisdiction by promulgating a Final Rule that requires the states to violate the Full Faith and Credit Statute and/or state law prohibiting the recognition of same-sex marriages from other jurisdictions.

The Full Faith and Credit Statute relied on by the states appears in Section 2 of the Defense of Marriage Act, which provides:

> No state, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record or judicial proceeding of any other state, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state, territory, possession, or tribe, or a right or claim arising from such relationship.

The Texas District Court found that all of the states met their burden by proving that the Final Rule would likely require the states to violate their own laws and found that the states faced a sufficiently immediate threat of harm because the Final Rule was scheduled to take effect on March 27, 2015. The court further held that given the Full Faith and Credit Statute remains valid, the states will likely succeed in proving that the Final Rule will be found not in accordance with law and in excess of statutory jurisdiction, authority or limitations or short of statutory right.

In a 24-page opinion, the court granted the plaintiff states' motion for preliminary injunction and ordered that "the Department of Labor must stay the application of the Final Rule pending a full determination of this matter on the merits."

DOL'S RESPONSE – UPDATED WEBSITE

The DOL has updated its website to note the issuance of the preliminary injunction with respect to the Final Rule revising the regulatory definition of spouse under the FMLA. However, the DOL has not formally taken a position as to the effect of that ruling.

WHAT'S NEXT – HOW FAR DOES THE INJUNCTION GO?

On March 31, 2015, the United States filed a formal request for hearing to be scheduled April 13, seeking an opportunity to present argument that the preliminary injunction should not have issued and now should be dissolved.

Though it is not clear from the order itself whether the stay will be applied nationwide or will be limited in scope to the four states that filed suit, the United States' request for hearing clearly suggests the latter. Specifically:

> [W]hile the preliminary injunction remains in effect, the defendants do not intend to take any action to enforce the provisions of the Family Medical Leave Act (FMLA), or the Department of Labor's FMLA regulations, against the states of Texas, Arkansas, Louisiana, or Nebraska, or officers, agencies, or employees of those states acting in their official capacity, in a manner that employs the definition of the term "spouse" contained in the February 25, 2015, final rule.

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The defendants further understand that this court's order was not intended to preclude enforcement of the provisions of the FMLA under the new rule against persons other than the named plaintiffs in this action and thus applies only to the state governments of the states of Texas, Arkansas, Louisiana and Nebraska.

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Even presuming the scope of the injunction is clarified, it is unlikely to result in any finality, and we may see similar proceedings in other jurisdictions where same-sex marriage remains prohibited.

Debates over the implementation of the Final Rule and other same-sex marriage issues will likely remain on-going, pending the outcome of the U.S. Supreme Court's decision later this term. The Supreme Court has scheduled an oral argument for April 28, 2015 to address questions raised in several cases whether the 14th Amendment (1) requires a state to license a marriage between two people of the same sex; and (2) requires a state to recognize a marriage between two people of the same sex when their marriage was lawfully licenses and performed out-of-state.

Reference: Texas v. United States, No. 7:15-cv-00056 (N.D. Tex.).

If you have any questions about how this decision will impact your workforce, please contact Jennifer Gonzalez at jgonzalez@hallrender.com, Steve Lyman at slyman@hallrender.com or your regular Hall Render attorney.

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