



November 28, 2011

Mary Ziegler  
Director, Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division  
U.S. Department of Labor, Room S-3502  
200 Constitution Ave., NW  
Washington, DC 20210

**RE: Information Collection: The Family and Medical Leave Act Optional Forms – Control Number 1235-0003**

Dear Ms. Ziegler:

On behalf of the two million children in the United States with parents who are lesbian, gay, bisexual, or transgender (LGBT), Family Equality Council would like to thank you for the opportunity to respond to this request for information on the Family Medical Leave Act (FMLA) Optional Forms.

In June 2010, Deputy Administrator Nancy Leppick issued a clarification of the definition of “son or daughter” under FMLA as it applies to an employee standing “in loco parentis” to a child.<sup>1</sup> The interpretation holds that parents standing “in loco parentis” include the same-sex partners of parents who lack a legal or biological relationship to their children. This interpretation has made a significant difference to working parents, many of whom are treated as legal strangers to their children and their partners. We thank the Wage and Hour Division and the Department of Labor for their work recognizing all the mothers and fathers who have made the commitment to be parents.

**Optional Forms**

Family Equality Council is working at the federal level to ensure that all publicly available federal forms reflect the diversity of American families. Where possible, we recommend that the definitions of “parent” and “child” be expanded within the statutory and regulatory framework to allow all qualified families to access appropriate benefits. The optional forms for the Family Medical Leave Act reflect the broad definitions of parent<sup>2</sup> and child<sup>3</sup> found in the FMLA.

Under the current rules, an employer may request that an employee provide “reasonable documentation or statement of a family relationship” when giving notice of a need for family or medical

---

<sup>1</sup> Administrator's Interpretation No. 2010-3, *Clarification of the definition of “son or daughter” under Section 101(12) of the Family and Medical Leave Act (FMLA) as it applies to an employee standing “in loco parentis” to a child*, Wage and Hour Division, Department of Labor (June 22, 2010).

<sup>2</sup> 29 C.F.R. § 825.122(b). A “parent” means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter.

<sup>3</sup> 29 C.F.R. § 825.122(c). [A] “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis . . .



leave.<sup>4</sup> According to the regulations, “[t]his documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, *etc.*”<sup>5</sup> We encourage DOL to continue to understand this request as broadly as possible. The American family is diverse and many parents in today's workforce are unable to create legal relationships with their children. Many of our families cannot obtain a birth certificate or court order that accurately reflects their children's parents. Given the Administrator's Interpretation of *in loco parentis*, we recommend that DOL interpret “reasonable documentation” broadly so that an affidavit from an employee as to the family relationship is sufficient to satisfy this requirement. Requesting additional documentation of a qualifying family relationship may prove to be overly burdensome and in many cases may create stress to the employee's family and cause delay or denial of appropriate benefits.

Again, we would like to thank the Department of the Labor and the Wage and Hour Division for their commitment to all working families, including those headed by parents who are lesbian, gay, bisexual, and transgender. We hope that these brief comments will ensure that the Family Medical Leave Act is accessible to more working families. Please feel free to contact Emily Hecht-McGowan, Director of Public Policy for Family Equality Council, with any questions either by telephone (202.496.1285) or email at [ehecht@familyequality.org](mailto:ehecht@familyequality.org).

Thank you,

A handwritten signature in black ink that reads "Jennifer Chrisler".

Jennifer Chrisler  
Executive Director

---

<sup>4</sup> 29 C.F.R. 825.122(j).

<sup>5</sup> *Id.*