



# MILLENNIUM UPDATE

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## Department of Labor Redefines "Spouse" Under FMLA and IRS Issues Guidance on the Cadillac Tax

### Department of Labor Redefines "Spouse" Under FMLA

**Who:** The Department of Labor (DOL) is set to issue a new rule that will affect all employers who are covered under the Family and Medical Leave Act (FMLA).

**What:** The new rule will expand FMLA eligibility to care for a spouse or family member to individuals in legal same-sex marriages. This rule will apply to every legally married couple, regardless of whether their current state recognizes same-sex marriages.

The rule revises the definition of "spouse" and so FMLA protections will apply to a married individual if the marriage was legal in the state where it was entered into, also known as "the place of celebration." For example, if an employee is legally married in one state and then moves to the state where your business resides - that employee and his or her spouse would be covered under the FMLA protections and benefits whether the business is in a state that recognizes same-sex marriages or not.

**When:** The Final Rule was issued on February 25, 2015 and will go into effect on March 27, 2015.

**Why:** The definition was revised to mirror the U.S. Supreme Court ruling that struck down the Defense of Marriage Act provision that limited the interpretation of "marriage" and "spouse" to opposite-sex marriages.

**Action required:** Employers should update FMLA Policies and Procedures to reflect this new definition of spouse.

## IRS Issues Guidelines on the Cadillac Tax

**Who:** The IRS and Treasury

**What:** The IRS issued a notice to begin and describe the process of developing regulatory guidance around the excise tax (Cadillac Tax) on high cost employer-sponsored health coverage. This falls under section 49801 of the Internal Revenue Code, which was added under the Affordable Care Act.

Under this section, if the "applicable employer-sponsored coverage" provided to an employee exceeds a statutory dollar limit, the excess is subject to a 40% excise tax. This limit is revised annually.

The notice addresses the following points:

- Defining which coverage is subject to the Cadillac Tax,
- Determining the cost of applicable coverage, and
- Outlining the applicable annual dollar amount

The current note on Section 49801 is not final. Treasury and IRS anticipate issuing another notice, before the publication of the proposed regulations, to describe and invite comments on potential approaches to a number of issues not addressed in the current notice.

After considering the comments on both notices, Treasury and IRS are planning to publish proposed regulations under Section 4980I. The proposed regulations will provide another opportunity for comment, including an opportunity to comment on the issues addressed in the preceding notices.

**When:** This section applies to the taxable years beginning after December 31, 2017.

[Click Here](#) for a copy of Notice 2015-2016.

**Action Required:** No action is required at this time.

Keith Tallmadge and the Team  
at Millennium Benefits Consulting

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