

Ask Lambda Legal

Our attorneys field your questions on the issues that matter to you most.



Q Last year, I asked my boss for medical leave to care for my eight-year-old son, who had been diagnosed with leukemia. I have raised him with my partner, who gave birth to him, since the day he was born. But I was denied leave because I'm not his biological mother and second-parent adoptions are unavailable in my state. Could the new interpretation of the Family and Medical Leave Act (FMLA) that President Obama announced in June help in the future?

A It should. The recent clarification of the Family and Medical Leave Act set forth by the Department of Labor gives all employees, whether LGBT or not, the same right to care for a sick child, even if that child is non-biological or non-adoptive.

The FMLA, passed by Congress in 1993, applies to public employees or people who work for private worksites with 50 or more employees. Generally, such personnel are entitled to 12 weeks of unpaid leave to care for a parent, spouse, son or daughter with “a serious health condition,” as well as time off to care for a newborn or recently adopted child. Before this recent clarification of the law, you could be assured of equal respect for your parenting role only if you had adopted

your child, and many in our community aren't lucky enough to live in a state that offers second-parent adoption.

You will still need to meet FMLA eligibility criteria, such as length of employment. Also bear in mind that the FMLA still won't allow a worker in a same-sex relationship to take leave to care for a sick partner. But we at Lambda Legal see the FMLA change as a sign that federal policies are finally starting to catch up with the ways people in this country actually live their lives.

—Greg Nevins, Supervising Senior Staff Attorney, Lambda Legal

6,020 Number of inquiries received by Lambda Legal's Help Desk in 2009

Q My sister, who is living with HIV, is about to go into prison. I am worried about her health. Is there anything she or I can do to ensure she gets proper care while she's inside?

A The U.S. Supreme Court has ruled that prison officials must provide medical treatment to prisoners, regardless of whether they are in a federal, state or local prison or jail.

And while the situation might be different for immigration detention centers, the following information could still be useful.

If she is not yet in prison, encourage your sister to ask her doctor to write a letter to prison medical officials explaining her HIV status and detailing her treatment plan—including names, dosages, and schedule for any medications—and the importance of continuous care in preventing drug resistance and protecting your sister's long-term health. She should also have her doctor do a complete physical and blood workup before she goes to prison. That way, current information about her condition will be available, and if by chance her health gets worse while in prison, she will have some evidence to show what is required for her to receive adequate care.

If you believe she is being denied adequate care, the law requires prisoners to use and “exhaust” any grievance process before filing a claim in court. Find out how to file a formal complaint at the prison, and follow up on any complaint you file: If a grievance is denied and the problem has not been fixed, file an appeal. If an appeal is denied, you should attempt to appeal that decision to the next level. Your sister should keep proof of how she tried to get the problem fixed. Help her make and keep copies of any complaints she files and all responses she receives.

If possible, your sister should also keep a diary about her medical conditions and the treatment she receives. She should list the names of medical staff she has seen, the effects of any delay in treatment and the number of days she goes without treatment. She should always include dates, a list of any witnesses to events she describes and any other information that would help show that a prison official was aware of her serious medical needs. One hopes these things do not end up in court, but if they do, you will want to be prepared. —Scott Schoettes, HIV Project Staff Attorney, Lambda Legal



IF YOU HAVE QUESTION FOR LAMBDA LEGAL ATTORNEYS

contact Lambda Legal's Help Desk at www.lambdalegal.org/help/online-form or call us toll free at 1-866-542-8336.