



Benefits to the Family of a Disabled or Deceased Federal Employee

Issue

Partners and children of gay and lesbian federal employees do not receive benefits in the event of the employee's disability or death from a work accident.¹

Short Answer

The Department of Labor ("DOL") should issue regulations explicitly defining the term "child" for purposes of benefit qualification to include children being raised by gay and lesbian couples, even where employee cannot obtain a legal relationship to the child through adoption.

Background

The current federal regulations provide that disability benefits unpaid at the time the federal employee dies (from a cause other than the disability) may be paid to the following survivors: widow(er), child, dependent parents, or other wholly dependent relatives.² If a death occurs in the line of duty, a portion of the decedent's salary will be paid to the widow, widower, child, and if none, to dependent parents, siblings, grandparents, and grandchildren.³

Because of the Defense of Marriage Act,⁴ same-sex partners are ineligible to receive disability benefits after the employee dies because "widow" is defined as a "wife" and "widower" as "husband."⁵ However, non-biological children may be able to qualify within the definition of "child." The federal statute states that a child is one who is "under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children."⁶

Although the federal statute enumerates classes of "children" that are eligible for these benefits, the language used does not suggest that the listed classes are exhaustive. Determining that an *in loco parentis* relationship would be sufficient to qualify for these benefits would allow gay and lesbian federal employees to protect the financial security of their partner's children in case of a work-related accident or death.

Recommendation

The Secretary of DOL should issue regulations that would explicitly define "child" to include a child to whom an employee is standing *in loco parentis*.

¹ See 5 U.S.C. §§ 8101 *et seq.* (2006). Note that if the death or disability is the result of a "hostile action," the "President shall prescribe regulations under which an agency head may pay compensation for the disability or death of an employee or a family member of an employee." "Family member" is broadly defined as someone "who is a member of the employee's family or household." 5 U.S.C. § 5570(a), (b).

² See *id.* at § 8109(a)(3)(D).

³ See *id.* at § 8133(a).

⁴ 1 U.S.C. § 7.

⁵ 5 U.S.C. § 8101(6), (11).

⁶ *Id.* at § 8101(9).



Authority

The Secretary of Labor may “prescribe rules and regulations necessary for the administration and enforcement of [federal employee benefits.]”⁷

⁷ *Id.* at § 8149.