



South Carolina Abolishes Common-Law Marriage: The Impact On Workplace Law

Insights

8.01.19

The South Carolina Supreme Court just ruled that the state will no longer recognize common-law marriages. This decision will have a direct impact on South Carolina workplace law, requiring many employers to adjust their employment policies and practices.

What Is Common Law Marriage?

Common-law marriage is a judicially created doctrine in which persons can be considered married by the courts without holding a formal ceremony or obtaining a marriage license from the state. It typically results from a relationship where the parties have been cohabitating for a certain period of time and holding themselves out to the public as spouses. The doctrine is usually invoked during divorce cases or probate proceedings.

What Happened?

With its July 24 ruling, the South Carolina Supreme Court found that, for a variety of reasons – including that determining whether those in question had mutually agreed to be considered married was often a guessing game – it was time for South Carolina to join the majority of states in abandoning the doctrine. Now, all marriages under South Carolina law that are entered into on or after July 24, 2019, will require a license.

What Do Employers Need To Know About The Decision?

Employers need to be aware of this important decision if an employee claims they are common law married for purposes of benefit plans and leave policies, particularly those created to comply with the Family and Medical Leave Act (FMLA). Under the FMLA, employees may take leave to care for a “spouse” who has a serious health condition, including a common-law spouse when that marriage is recognized by state law. Given that South Carolina will no longer recognize common law marriages, employees will not be eligible for spousal leave or related benefits under the FMLA to care for a common law spouse when such marriage is alleged to have been entered into on or after July 24, 2019.

Although the state has abolished common law marriage prospectively, employers should understand that common law marriages entered into *prior to* July 24, 2019, are still considered valid. Accordingly, employers will face issues regarding common law marriage for the foreseeable future. Employers may request reasonable documentation showing the existence of such marriage, as allowed by the FMLA. In addition, employers may need to revise their written policies and should

coordinate with their FMLA administrators to ensure they understand and apply this critical distinction.

We will continue to monitor any further developments and provide updates on this and other labor and employment issues affecting South Carolina employers, so make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in [our Columbia office](#).

This Legal Alert provides an overview of a state court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



Benjamin Dudek
Partner
803.255.0000
[Email](#)

Service Focus

Employee Leaves and Accommodations
Counseling and Advice