

# LEGAL UPDATE



## DOL Issues Guidance on Telework and FMLA Eligibility

The U.S. Department of Labor (DOL) has published a Field Assistance Bulletin (FAB) that includes guidance on how to apply eligibility rules under the Family and Medical Leave Act (FMLA) when employees telework or work away from an employer's facility. FABs provide guidance to DOL Wage and Hour Division (WHD) field staff.

### FMLA

The FMLA requires covered employers to provide eligible employees with up to 12 weeks of unpaid, job-protected leave for specific reasons related to the health and well-being of themselves and their families. Generally, employers are covered if they have at least 50 employees.

### FMLA Employee Eligibility Requirements

Employees are eligible for FMLA benefits if they:

- Have worked for their employer for at least 12 months;
- Have worked 1,250 hours during the 12 months preceding the leave; and
- Work at a location where the employer has at least 50 employees within 75 miles.

### FAB 2023-1

In [FAB No. 2023-1](#), issued Feb. 9, 2023, the WHD notes that employees who telework are eligible for FMLA leave on the same basis as any other employees, but for FMLA eligibility purposes, the teleworking employee's personal residence is not a worksite. The FAB states that when an employee works from home or otherwise teleworks, **their worksite for FMLA eligibility purposes is the office to which they report or from which their assignments are made.** Thus, if 50 employees are employed within 75 miles from the employer's worksite (the location to which the employee reports or from which their assignments are made), the employee meets that FMLA eligibility requirement.

In addition, according to the FAB, the count of employees within 75 miles of a worksite includes all employees whose worksite is within that area, **including employees who telework and report to or receive assignments from that worksite.**

### Hours Worked

The FAB also states that, with respect to the FMLA's hours-worked requirement, all hours worked are counted when an employee teleworks from home consistently or in combination with working at another or various worksites.

#### HIGHLIGHTS

##### Employee Worksite

For FMLA purposes, a teleworking employee's worksite is the office to which they report or from which assignments are made.

##### 50 Employees Within 75 Miles

Employees who telework but report to or receive assignments from a worksite are considered to work within 75 miles of the site.