

LEGAL UPDATE

DOL to Accept Telemedicine as In-person Visit for FMLA Purposes

On Dec. 29, 2020, the U.S. Department of Labor (DOL) published [Field Assistance Bulletin 2020-8](#) to provide enforcement guidance regarding the use of telemedicine when establishing a serious health condition under the Family and Medical Leave Act (FMLA).

FMLA Eligibility

FMLA job protections are available to eligible employees who need to take time off work due to their own serious health condition or the serious health condition of a spouse, child or parent.

A serious health condition must involve either inpatient care or continuing treatment by a health care provider. “Treatment” includes in-person medical examinations and evaluations by a health care provider and excludes phone calls, letters, emails or text messages.

However, as part of its response to the COVID-19 public emergency, the DOL issued [FAQ #12](#), allowing for telemedicine to be considered as in-person visits under the FMLA if certain criteria are met.

Telemedicine as In-person Visit

The DOL will consider a telemedicine visit with a health care provider as an in-person visit if the telemedicine visit:

- Includes an examination, evaluation or treatment by a health care provider;
- Is permitted and accepted by state licensing authorities; and
- Is generally performed by videoconference.

Communication methods that do not meet these criteria are insufficient, by themselves, to satisfy the regulatory requirement of an “in-person” visit.

FMLA Highlights

- FMLA provides eligible employees of covered employers with up to 12 workweeks of unpaid, job-protected leave each year.
- FMLA is available due to an employee’s serious health condition, or the serious health condition of certain family members.
- Serious health conditions include illness, injury, impairment, and physical or mental conditions.

The DOL will consider telemedicine an in-person visit for FMLA purposes if certain criteria are met.

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