



HR BRIEF

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DOL Issues Guidance on Telework and FMLA Eligibility

On Feb. 9, 2023, the U.S. Department of Labor (DOL) published a Field Assistance Bulletin (FAB) No. 2023-1 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.

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. 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
- Work at a location where the employer has at least

50 employees within 75 miles

FAB 2023-1

In [FAB No. 2023-1](#), 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.

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.

3 Employment Policies to Review in 2023

Employee handbooks are important tools for establishing employee expectations, addressing workplace issues and defending against potential lawsuits. Employment laws are often complicated, and new regulatory developments may impact these policies. Here are three employment policies employers should consider reviewing in 2023.

1. Pay Transparency

Pay transparency is the practice of an employer openly communicating pay-related information to prospective and current employees through established methods. With demands for pay transparency increasing, more states and localities have passed legislation in recent years. More employers are considering these policies to meet employee desires, even if they are in jurisdictions that do not require pay transparency.

2. Paid Leave

Paid leave laws ensure workers continue receiving a portion of their wages when they're unable to work under certain circumstances. In 2022, many states and localities enacted paid leave laws. This year,

several previously enacted leave laws became effective in various states and cities throughout the United States; many other states have recently proposed paid leave legislation. As such, employers should ensure their leave policies are current and comply with local laws. An employer's leave policies can also clearly communicate eligibility to employees.

3. Remote and Hybrid Work Arrangements

Employers continue to allow employees to take advantage of flexible work arrangements, but many have not updated their employment policies to adequately address these arrangements. These policies can set clear expectations surrounding employee work hours, communication, productivity, technology usage and more.

Summary

Employers can take steps to ensure their employment policies are current and reflect the most recent regulatory developments. Reach out today for additional resources.