

# Electronic Alert

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## The U.S. Department of Labor Issues Guidance on Telework, FMLA & FLSA Compliance

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On February 9, 2023, the United States Department of Labor, Wage and Hour Division (“DOL”) published an opinion letter and a field assistance bulletin concerning the Fair Labor Standards Act (“FLSA”) and the Family and Medical Leave Act (“FMLA”).

The [DOL opinion letter](#) clarifies that an eligible employee with a serious health condition requiring limited work hours may use FMLA leave to work a reduced number of hours per day. Under the FMLA, employees may take up to 12 workweeks of leave in a 12-month period. Employees taking intermittent or reduced-schedule leave may use their FMLA leave in the smallest increment of time the employer allows for other forms of leave, provided that the increment is no longer than one hour. If the employee never exhausts their FMLA leave, they may work a reduced schedule indefinitely.

The [DOL field assistance bulletin](#) advises employers in (1) ensuring workers who telework are paid properly under the FLSA, (2) applying protections for reasonable break time for nursing employees to express milk while teleworking, and (3) applying FMLA eligibility rules to employees who telework. The bulletin emphasizes that “short breaks” of twenty minutes or fewer must be counted as compensable hours worked, even when employees are teleworking. By contrast, meal breaks (typically 30 minutes or more) are not counted as compensable hours worked when the employee is completely relieved from duty, meaning the employee is told in advance that they may leave the job and will not have to commence work until a specified time. An employee may also be relieved from duty if the employer permits the employee to choose the time at which they resume working and the break is long enough for the employee to effectively use it for their own purposes.

Additionally, employees working from home or another location must still be provided a place to pump breast milk that is not a bathroom, that is shielded from view, and is free from intrusion by coworkers and the public. The employee must be free from observation from a computer camera, security camera, or web conferencing platform while expressing breast milk, regardless of the location they are working from.

Last, to be eligible for FMLA leave, an employee must be employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. For FMLA eligibility purposes, their worksite is the office to which they report or from which their assignments are made. The DOL opinion letter and field assistance bulletin are important reminders to employers and provide several examples of how these rules apply to various employee scenarios. Given the recent rollout of paid family leave in Oregon, in addition to these pointers from the DOL, now is a great time to review your policies for legal compliance.

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