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U.S. Department of Labor Clarifies Break Requirements and FMLA Eligibility for Remote Workers



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Human Resources & Employment

The U.S. Department of Labor's (DOL) Wage and Hour Division released a Field Assistance Bulletin (FAB) providing guidance about employer obligations and worker protections under the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA) for remote employees.

The DOL advises employers that:

- Employee breaks are considered "hours worked" under the Fair Labor Standards Act (FLSA) if an employee is working during those break
- Employers must ensure that nursing mothers are receiving break times and a private space to express breast milk, regardless of where that employee works from
- When determining eligibility for leave under the Family and Medical Leave Act (FMLA), employers may not use a remote employee's residence to determine whether it has 50 employees within 75 miles

Breaks While Working Remotely

Under the FLSA, employees are entitled to compensation for short breaks of 20 minutes or less. According to the FAB, this entitlement applies regardless of whether the employees are working at the office, at home or another location not controlled by the employer. Meal breaks and breaks longer than 20 minutes that "permit an employee to use the time effectively for their own purposes and during which the employee is completely relieved from duty" are not considered hours worked. In order to be completely relieved from duty, however, the employer must tell the employee in advance that they may leave the job and that they will not have to start work until a specified hour has arrived. As an example, the DOL notes that if an employee receives several work calls during their lunch break, then the employee was not relieved of work under these circumstances and it counts as "hours worked" under the FLSA.

Employers Must Provide Breaks for Nursing Mothers

Under the FLSA, employers must provide reasonable break time and a place to pump breastmilk to nursing mothers. In the FAB, the DOL takes the position that these protections apply even if the employee is working from home or another location. As an example, employers must provide a place for a nursing mother to pump breast milk if they are working at an off-site location, such as a client worksite. Moreover, even if an employee is working at a different location, the employer must ensure that the private nursing space is "shielded from view." For example, employers must ensure that an employee is free from observation by any employer provided or required video system, including a computer camera, security camera or web conferencing platform. In other words, nursing or expressing breast milk should not take place in front of the employee's Zoom or Microsoft Teams camera.

The FAB also states that employees must be paid for the time to pump breast milk if they are not relieved of duty. For instance, a nursing employee that is on a virtual meeting or conference call is generally “not relieved from duty, even if their camera is off. In such a circumstance, the employee must be paid for that time.”

To Determine FMLA Eligibility, Employers Must Use the Office that Remote Employees Receive Assignments From

Employees are eligible for FMLA leave if they have worked for at least 12 months, have worked for the employer for at least 1250 hours and work at a location where the employer has at least 50 employees within 75 miles. According to the FAB, 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.

If you have any questions regarding the DOL’s recent guidance on employees working from home, please contact a member of Gould & Ratner’s [Human Resources and Employment Law Practice](#).