



DOL Clarifies Use of Telemedicine for Purposes of FMLA Leave

The Department of Labor (“DOL”) has issued Field Assistance Bulletin (“FAB”) 2020-8 to provide guidance regarding the use of telemedicine in establishing a “serious health condition” under the Family and Medical Leave Act (“FMLA”).

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The FMLA entitles eligible employees of covered employers to unpaid, job-protected leave for specified family and medical reasons. Generally speaking, eligible employees may take up to 12 weeks of leave in a 12-month period for a serious health condition.

The FMLA defines a “serious health condition” as an “illness, injury, impairment, or physical or mental condition that involves” either “inpatient care in a hospital, hospice, or residential medical care facility” or “continuing treatment by a health care provider.” DOL regulations define the term “treatment” to include “examinations to determine if a serious health condition exists and evaluations of the condition.” However, DOL regulations provide that, “Treatment by a health care provider means an in-person visit to a health care provider.”

FAB

DOL now confirms that it considers “telemedicine visits to be in-person visits...for purposes of establishing a serious health condition under the FMLA.” Unlike previous DOL pronouncements, the FAB does not limit the time period during which this interpretation will be effective.

To be considered an “in-person” visit, the telemedicine visit must include

- include an examination, evaluation, or treatment by a health care provider;
- be permitted and accepted by state licensing authorities; and
- generally, should be performed by video conference.

Communication methods that do not meet these criteria (e.g., a simple telephone call, letter, email, or text message) are insufficient, by themselves, to satisfy the requirement of an “in-person” visit.

DOL notes that, “Telemedicine allows patients to maintain access to the care they need, with added advantages such as decreased travel time and expense for patients in rural areas, reduced exposure to potential infections for vulnerable patients, and reduced need for healthcare staff to exhaust personal protective equipment and patient care supplies. As the U.S. Centers for Disease Control and Prevention (CDC) has documented, treatment by telemedicine has grown increasingly widespread over the last twenty years.”

The FAB is available at: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_8.pdf

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