

# 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.*

Provided to you by **Clark & Associates**

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