

The Importance of Establishing a Fiduciary Committee

The establishment of a fiduciary committee through formal action and proper documentation is crucial for mitigating fiduciary responsibilities for a company's board of directors and senior management. By designating a committee as the ERISA plan administrator and ensuring regular reporting to the board, organizations can limit the fiduciary exposure of individuals who lack substantive knowledge of the inner workings of the company's employee benefit plans. This structured approach not only protects board members and senior managers from detailed scrutiny during litigation but also upholds the integrity and proper oversight of the plan's management.

To understand the stakes, consider a company with a group health plan without a formal fiduciary committee. In this example, by default, the board is the plan administrator, and members of management have likely exercised discretion over plan management, thereby making them fiduciaries as well. If the plan is sued, the plaintiff's lawyers will depose the board members and senior managers, asking them detailed questions about plan maintenance and operation. It takes little imagination to understand that these depositions will not go well.

Now consider the alternative: Assume that the board has formally voted and passed resolutions to establish a welfare plan fiduciary committee, which is designated as the ERISA plan administrator. The vote also adopts a committee charter (or delegates that task to the committee) and might also include guidelines for the committee's operations. The committee is required to report at least annually to the board on its operations, thereby facilitating the board's oversight. Now again assume that the plan is sued. While the board members will likely be deposed, the plaintiff's inquiry will be limited to their oversight of the committee's actions. [McDermott Will & Emery](#)

Navigating HIPAA and FMLA Requirements When Requesting Employee Health Information

When employers need to request individually identifiable health information, such as a medical certification under the Family and Medical Leave Act (FMLA), it's crucial to understand how HIPAA regulations apply. Whether you need an employee's authorization under HIPAA depends on the situation and how the information is obtained.

Employee-Provided Information: Often, employees seeking FMLA leave will obtain necessary medical information from their healthcare provider and then provide it directly to their employer. In these cases, since the employee voluntarily shares the information, HIPAA does not require additional authorization.

Direct Employer-Provider Communication: The situation changes if the employer needs to communicate directly with the healthcare provider. Here, HIPAA treats the medical information as Protected Health Information (PHI), and the provider cannot release it to the employer without the employee's explicit authorization. This authorization must meet HIPAA's specific requirements. Additionally, FMLA regulations restrict the contact an employer can have with an employee's healthcare provider. Employers are only allowed to request clarification or authentication of a medical certification through a designated representative, and even then, HIPAA authorization may be necessary.

If the information involves PHI and the employer seeks it directly from a healthcare provider, obtaining a proper HIPAA authorization is essential. Without this, the provider is unlikely to release the information, and the employer may risk non-compliance with federal law. If the employee refuses to provide the necessary authorization, the employer has the right to deny the FMLA leave request. [Thomson Reuters](#)

Eating for a Long, Healthy Life



We live in a culture obsessed with longevity. Living a long, healthy life is determined by diet, exercise, lifestyle and genetics says Susan B. Roberts, the senior associate dean for research at Geisel

School of Medicine at Dartmouth. Diet isn't an exact science, but here are the best clues we have for now.

Prioritize Protein, Especially from Plants: Consuming adequate protein, particularly from plant-based sources like legumes, nuts, and whole grains, is essential for longevity and maintaining muscle and bone strength as you age. Avoid relying heavily on red and processed meats, which are linked to shorter life spans.

Incorporate Bone-Strengthening Nutrients: Ensure sufficient intake of calcium and vitamin D to support bone health. These nutrients can be found in dairy products, fortified plant milks, leafy greens, and through sunlight exposure. If dietary sources fall short, consider supplements after consulting a healthcare provider.

Pump Up the Polyphenols: Polyphenols, found in fruits, vegetables, nuts, legumes, and beverages like coffee and green tea, have antioxidant and anti-inflammatory properties that may promote healthy aging and reduce the risk of chronic diseases.

Focus on Healthy Fats: Diets high in unsaturated fats, particularly from sources like olive oil, nuts, seeds, and fatty fish, are associated with lower mortality and better brain health. Conversely, diets rich in saturated fats from red and processed meats can have the opposite effect.

Limit Ultraprocessed Foods: Ultraprocessed foods, such as packaged snacks, sugary beverages, and processed meats, are linked to increased risks of heart disease, Type 2 diabetes, and a shorter life span. Limiting these foods can significantly improve health outcomes.

Consider the Big Picture: Overall dietary patterns are more important than any single food. Diets like the Mediterranean or plant-based diets, which emphasize unprocessed foods, whole grains, and vegetables, are associated with reduced risks of earlier death. However, there is flexibility in choosing a diet that works best for individual preferences and health goals. [NY Times](#)

FMLA Considerations for Remote Employees

One of the challenges many employers face in this remote-work world is how to address complicated HR issues such as leaves of absence for those remote employees, including



whether such employees are eligible for medical leave under the federal Family and Medical Leave Act (FMLA). (Note: this addresses issues only under the federal FMLA, not under any state FMLA.)

To be eligible for leave under federal FMLA, an employee must (1) have worked for the employer for at least 12 months, (2) have at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave, and (3) work at a worksite where the employer has at least 50 employees within 75 miles.

The question is: where is the remote worker's "worksite"? If your answer is that the remote employee's "worksite" is their home, you would be wrong. At least according to the U.S. Department of Labor.

In 2023, the U.S. DOL released guidance, buried in a field assistance bulletin, clarifying this issue. According to Field Assistance Bulletin 2023-1: For FMLA eligibility purposes, the employee's personal residence is not a worksite... 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. Thus, if 50 employees are employed within 75 miles from the employer's worksite (the location to which the employee reports or from which their assignments are made), the employee meets that FMLA eligibility requirement.

Significantly, this guidance now requires employers to consider the physical office location remote employees report to and receive their work from as being the "worksite" for purposes of determining FMLA eligibility.

Why is this important for employers? In short, if a fully remote employee's "reporting office" employs 50 or more employees within a 75-mile radius, and if they meet the 12-month and 1,250-hour requirements, the employee is generally eligible for federal FMLA leave. More importantly, employers cannot treat a remote worker as a one employee worksite, which would not be a large enough worksite for the employee to qualify for federal FMLA. [Pullman & Comley](#)