



Quarterly

Your Keys to *Compliance*



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FMLA - What constitutes an Employee?

It is often confusing for employers when evaluating their workforce in order to comply with the requirements of the Family and Medical Leave Act. It is sometimes difficult to determine what constitutes an employee. Areas such as union or temporary employees are specifically addressed in the code. Also addressed are mobile worksites and how they affect the requirement of 50 employees within a 75 mile radius.

Joint Employment

In joint employment relationships, only the primary employer is responsible for giving required notices to its employees. Employees jointly employed by two employers must be counted by both employers, whether or not maintained on one of the employer's payroll. For example, a union may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.



In many union situations, some employees work directly for the union yet are still controlled by another employer. For further information, go to www.dol.gov/dol/allcfr/Title_29/Part_825/29CFR825.106.htm

Mobile Worksites

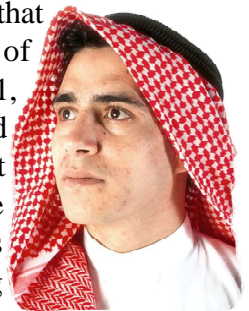
The DOL gives employers general guidelines to follow when determining if the employer employs 50 employees within 75 miles of the worksite where the employee needing leave is employed.

- An employee's worksite will ordinarily be the site to which the employee reports or from which the employee's work is assigned.
- For employees with no fixed worksite (construction workers, truck drivers) the 'worksite' is the site to which they are assigned as their home base or to which they report.

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Reports of Workplace Discrimination on the rise.

The EEOC reports that since the attacks of September 11, 2001, they have recorded a significant increase in the number of charges alleging discrimination based on religion and/or national origin. Many of the charges have been filed by individuals who are or are perceived to be Muslim, Arab, South Asian or Sikh. These charges most commonly allege harassment and discharge.



According to the EEOC, "Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination based on religion, ethnicity, country of origin, race and color. Such discrimination is prohibited in any aspect of employment including recruitment, hiring, promotion, benefits, training, job duties, and termination. Workplace harassment is also prohibited by Title VII. In addition, an employer must provide a reasonable accommodation for religious practices unless doing so would result in undue hardship."

While employers have an ongoing responsibility to address workplace discrimination, the events of 9/11 may demand increased efforts. For further information and examples of potentially discriminatory situations, please go to www.eeoc.gov/facts/backlash-employer.html



*For more information on these or other Compliance Issues, contact your **Spetner Associates** Compliance Check Specialist at 314-442-0007*

Are Your Workers Employees?

There are no clear cut guidelines or specific definitions that may be used to determine whether an individual is an employee or an independent contractor. Rather, the Supreme Court has determined that there are a number of factors that need to be evaluated.

According to the DOL, the Supreme Court has determined the factors that are significant, although no single one is regarded as controlling. These are:

- the extent to which the worker's services are an integral part of the company's operations,
- the permanency of the relationship,
- the worker's investment in facilities and equipment,
- the nature and degree of control by the principal,
- the worker's opportunity for profit and loss, and
- the level of skill required in performing the job.

Not all Federal Laws share common definitions. These factors are used to determine employment status under the Fair Labor Standards Act (FLSA). This determination is important as the FLSA only covers employees, not contractors. Also, some employees are exempt from the various provisions of FLSA. For further information, go to www.dol.gov/elaws/esa/flsa/scope/er14.asp or call your Compliance Check specialist for a review of FLSA factors.



Has your business experienced a growth in the number of employees over the past year? If so, check with your Compliance Check agent to help determine if any new federal requirements may apply due to your expanded work force.



FMLA Continued....

- For transportation workers, their worksite is the terminal to which they are assigned, report for work, depart, and return after completion of a work assignment.
- An employee's personal residence is not a worksite in the case of employees such as salespersons who generally leave to work and return from work to their personal residence.
- Employee's who work at home under the flexiplace concept have as their worksite the office to which they report and from which assignments are made.

For further information, please go to www.dol.gov/dol/allcfr/Title_29/Part_825/29CFR825.111.htm