

Compliance Alert!

Six New DOL Opinion Letters: What Employers need to Know about Pay, Overtime, and FMLA Leave

The U.S. Department of Labor (DOL) recently issued six new opinion letters interpreting key provisions of the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA). While opinion letters do not carry the force of law, they reflect the DOL's current enforcement position and provide valuable insight into how the agency analyzes common wage-and-hour and leave issues. Taken together, these letters offer practical guidance and important cautionary reminders on compliance topics that frequently create risk for employers. Below is a summary of each opinion letter and its key takeaway.

1. Reclassification and Exempt Status (FLSA2026-1)

Issue:

Whether an employer may classify an employee as nonexempt even if the employee otherwise meets the criteria for an FLSA exemption.

Key Takeaway:

DOL confirmed that employers may choose to classify an employee as nonexempt even if the employee satisfies an exemption so long as the employer complies with minimum wage, overtime, and recordkeeping requirements.

2. Nondiscretionary Bonuses and Overtime (FLSA2026-2)

Issue:

Whether bonuses must be included in a nonexempt employee's regular rate of pay for overtime calculations.

Key Takeaway:

Nondiscretionary bonuses must be included in an employee's regular rate of pay for overtime calculations if they are **nondiscretionary**, meaning they are: (a) based on predetermined performance-based criteria; (b) the employer made a promise in advance to pay the bonuses; and (c) employees reasonably expected to earn them. Only truly discretionary bonuses may be excluded from overtime calculations.

3. Pre-Shift Roll Call Compensation (FLSA2026-3)

Issue:

Whether a proposed 15 minute mandatory pre-shift roll calls provision under a collective bargaining agreement would count as compensable for purposes of calculating overtime.

Key Takeaway:

The DOL confirmed that mandatory pre-shift activities are compensable work and must be included when calculating overtime.

4. Retail or Service Establishment Overtime Exemption (FLSA2026-4)

Issue:

How to apply the "retail or service establishment" overtime exemption.

Key Takeaway:

- The federal minimum wage (\$7.25), not a higher state minimum wage, applies when determining eligibility for this exemption.
- Tips are not "commissions," but may count as "compensation" if they are used to meet wage obligations (such as through a tip credit).
- Tips not used to satisfy wage obligations may, in limited circumstances, be treated as commissions for purposes of the exemption.

5. Calculating FMLA Leave During Partial-Week Closures (FMLA2026-5)

Issue:

How FMLA leave should be calculated when a workplace closes for part of a workweek (e.g., due to inclement weather).

Key Takeaway:

Days when the workplace is closed do **not** count against an employee's FMLA entitlement unless the employee was expected to work on those days. However, if an employee takes FMLA leave for an entire workweek, the full week counts as FMLA leave even if the closure occurred during the week.

6. FMLA Leave and Travel Time (FMLA2026-6)

Issue:

Whether FMLA leave may be used for travel time to and from medical appointments for an employee or family member.

Key Takeaway:

The DOL confirmed that FMLA leave may be used for travel time to and from medical appointments, and that a separate medical certification is not required for that travel. However, FMLA does not cover unrelated travel even if the employee or family member has a qualifying serious health condition.

Why the Opinion Letters Matter

The opinion letters highlight areas where employers frequently make well-intentioned but costly compliance mistakes. Together, the letters reinforce that classification decisions, overtime calculations, and leave administration require careful attention to details.

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