

The DOL Reissues Previously Rescinded Opinion Letters

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Under the Obama administration, the Department of Labor (“DOL”) announced that it would no longer issue opinion letters. It also rescinded 17 opinion letters that had been issued under the Bush administration. Opinion letters historically served as a mechanism for the DOL to respond to fact-specific employer inquiries about wage and hour issues. While the opinion letters are not binding law, they remain a helpful resource for employers attempting to navigate the more ambiguous areas of the Fair Labor Standards Act (“FLSA”).

A recent development suggests that the DOL may, once again, begin issuing opinion letters. On January 5, 2018, the DOL reissued the 17 opinion letters that were rescinded under the Obama administration. These letters offer significant guidance on numerous wage and hour issues, including the exempt status of many specific positions. Of broader relevance, the reissued opinion letters include the following:

- FLSA 2018-14 - Salary deductions may be made when an employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Deductions may be made for absences of one or more full days for sickness or disability, if the deductions are made pursuant to “a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability.” Deductions from an employee’s guaranteed salary may only be taken if the employee misses one or more full days of work. The regulations do not permit salary deductions for partial day absences.
- FLSA 2018-11 - In calculating the regular rate of pay for purposes of overtime, job bonuses that are conditioned only on performing the required work associated with the job must be included.
- FLSA 2018-7 - Employers may calculate salary deductions for a full-day’s absence on the number of hours actually missed. Therefore, where an employee is scheduled to work nine hours during the workday, the employer may make the deduction for the full nine hours from the employee’s salary (i.e., the amount of time actually missed).

The 17 reissued letters, along with older DOL opinion letters, can be found [here](#). Although not every letter is pertinent to all employers, they remain a valuable source of information and worthy of employer review.

If you have any questions on this topic, please contact a member of our [Labor & Employment Practice Group](#).

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