

After Decade of Silence, DOL on Opinion Letter Spree

Labor & Employment Law Update

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We previously reported that in 2018, the U.S. Department of Labor (DOL) began issuing opinion letters again after nearly a decade of silence. While the legislature makes laws, the consequences of presidential elections flow into the executive agencies charged with administering and enforcing the laws.

As of the close of 2018, the DOL had issued more than 30 new opinion letters involving the Family and Medical Leave Act (FMLA) or Fair Labor Standards Act (FLSA), and those letters addressed a variety of topics including minimum wage and overtime for employees paid varying rates, the compensability of frequent rest breaks required as a reasonable accommodation for a disability, and travel time. The DOL's opinion letters represent the agency's official interpretation of how it would enforce the statutes under its jurisdiction. Employers, especially those operating close to the margins of the law, should pay careful attention to these opinions and adjust their practices accordingly.

Companies with questions or concerns relating to FMLA and FLSA practices may also wish to seek their own opinions letters—which may be submitted anonymously, through counsel—for clarity regarding complicated compliance matters. Additionally, given the substantial risks and liabilities that may arise from medical leave and wage & hour administration, companies should also err on the side of caution by seeking the advice of knowledgeable employment counsel, and regularly undertaking audits of FMLA and FLSA-related policies and practices.