U.S. Department of Labor Issues New FLSA and FMLA Opinion Letters: Key Compliance Takeaways for Employers

Labor & Employment Law Update

By Laurie Meyer on January 21, 2026

The U.S. Department of Labor (DOL) recently released a new set of opinion letters addressing recurring questions under the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA).

While opinion letters are based on specific fact patterns, they provide valuable insight into how the DOL analyzes common compliance questions and foreshadow DOL enforcement priorities, and they are often relied upon by courts and investigators.

The latest batch addresses employee classification, overtime calculations, collective bargaining agreements, commission exemptions, and FMLA leave usage. Below, we summarize the most significant takeaways for employers.

Reclassifying Employees Who Qualify for the Learned Professional Exemption (FLSA2026-1)

This opinion letter addresses two related questions:

1. Whether an employee's role satisfies the criteria for the learned professional exemption under FLSA section 13(a)(1), and
2. Whether an employer may nevertheless reclassify the employee as non-exempt.

KEY TAKEAWAY:

Even if an employee qualifies for the learned professional exemption, the FLSA does not require an employer to classify that employee as exempt. Employers remain free to classify potentially exempt employees as non-exempt and pay overtime, provided they comply with minimum wage and overtime requirements.

WHY IT MATTERS:

This guidance reinforces that exemption status is permissive, not mandatory. Employers considering reclassification—often for risk management, morale, or operational reasons—may do so without violating the FLSA, as long as the employee is properly compensated for all hours worked. Employers should recognize, however, that when an employee does not meet the criteria for exempt status, they should properly be treated and compensated as non-exempt.

Bonuses and the Regular Rate of Pay (FLSA2026-2)

This letter examines whether certain bonus payments may be excluded from the regular rate of pay under section 7(e) of the FLSA and, if not, how they must be incorporated into overtime calculations.

KEY TAKEAWAY:

Bonuses that are *non-discretionary*—including those tied to productivity, attendance, or performance—generally must be included in the regular rate of pay. When inclusion is required, employers must recalculate overtime premiums to reflect the additional compensation.

WHY IT MATTERS:

Bonus programs remain a frequent source of wage and hour exposure, and misclassifying bonuses as excludable remains a common wage and hour error. Employers should carefully review bonus programs and ensure payroll systems properly allocate includable bonuses across the applicable workweeks.

Pre-Shift "Roll Call" Time and Overtime Under a CBA (FLSA2026-3)

This opinion letter considers whether a collective bargaining agreement (CBA) may require employees to attend a mandatory 15-minute "roll call" before each shift but exclude that time from overtime calculations.

KEY TAKEAWAY:

Mandatory pre-shift activities that are integral and indispensable to the employee's principal activities are compensable under the FLSA and must be counted when calculating overtime premiums—even if a CBA provides otherwise.

WHY IT MATTERS:

CBAs cannot waive statutory overtime rights. Unionized employers should review pre- and post-shift practices to ensure all compensable time is properly counted toward overtime, regardless of negotiated contract language.

Commissioned Employee Overtime Exemption and Minimum Wage Standards (FLSA2026-4)

This letter addresses two recurring issues under the retail or service establishment exemption in section 7(i):

1. Whether the federal or higher state minimum wage applies when evaluating the minimum pay requirement, and
2. Whether tips count as "compensation" for determining whether more than half of an employee's earnings come from commissions.

KEY TAKEAWAYS:

- Employers must use the applicable federal minimum wage, not a higher state minimum wage, when assessing compliance with section 7(i)'s minimum pay threshold.
- Tips are not considered commissions and do not count toward the requirement that more than half of the employee's compensation be derived from commissions.

WHY IT MATTERS:

Employers relying on the 7(i) exemption must carefully audit compensation structures. Improper inclusion of tips or misapplication of wage thresholds can easily defeat the exemption and trigger overtime liability.

FMLA Leave and Partial-Week School Closures (FMLA-2026-1)

This FMLA opinion letter addresses how to calculate FMLA leave usage when a school employer closes for part of a week (e.g., weather-related closures).

KEY TAKEAWAY:

If a school closure lasts less than a full workweek, an employer may not count the closure period against an employee's FMLA leave entitlement unless the employee was otherwise scheduled and expected to work during that time.

WHY IT MATTERS:

School employers must distinguish between full-week closures and partial-week closures when tracking FMLA leave, particularly for instructional and support staff with fixed schedules.

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Travel Time to Medical Appointments and FMLA Leave (FMLA-2026-2)

This letter addresses whether FMLA leave may be used for time spent traveling to and from medical appointments when medical certification confirms the need for the appointment but is silent on travel time.

KEY TAKEAWAY:

When travel time is necessary to obtain medical treatment, it may be covered by FMLA leave, even if the certification does not expressly reference travel, provided the leave is otherwise qualifying and reasonable.

WHY IT MATTERS:

Employers should avoid overly narrow interpretations of medical certifications and should evaluate whether travel time is an inherent part of receiving the covered treatment.

Bottom Line for Employers

These opinion letters underscore several recurring themes:

- Exemptions under the FLSA are narrowly construed and strictly enforced.
- Compensation structures—including bonuses, commissions, and pre-shift activities—require careful analysis.
- Neither CBAs nor internal policies can override statutory wage and hour protections.
- FMLA leave administration requires a practical, fact-specific approach. These determinations often depend upon operational realities, not rigid technicalities.

Employers should review pay practices, exemption classifications, and leave administration policies in light of this guidance and consult counsel when making changes that could impact wage and hour or leave compliance.

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