

DOL Brings Back Opinion Letters

This week, the DOL announced that it is reviving the long-standing practice of issuing opinion letters that the Obama administration eliminated in 2010. Wage and Hour Division opinion letters will replace the broader administrator interpretations, allowing businesses and workers to once again seek individualized guidance on their particular employment practices in order to ensure compliance.

Background

For more than 70 years, the DOL's Wage & Hour Division (WHD) issued written opinion letters to weigh in on legal issues individual employers and employees faced. Employers could rely on those letters describing how a particular law applies in specific circumstances as a good faith defense to federal minimum wage and overtime claims or to limit their liability for liquidated damages.

In 2010, the Obama administration discontinued the WHD's decades-old practice of issuing opinions tailored to particular factual situations in favor of WHD Administrator Interpretations offering more broad-based guidance. Unlike opinion letters, Administrator Interpretations provided a general interpretation of a statutory or regulatory issue applicable to an entire industry, category of employees or all employees. On March 24, 2010, WHD issued its first Administrator Interpretation, stating that the Fair Labor Standards Act's (FLSA's) administrative exemption from overtime pay provisions does not apply to mortgage loan officers



Comment. The DOL recently rescinded Administrator's Interpretations Nos. 2015-1 and 2016-1 concerning independent contracting and joint employment under the FLSA. (See our [June 8, 2017 FYI Alert](#).)

Opinion Letters Return

On June 27, the DOL [announced](#) that it is reinstating Wage and Hour opinion letters to provide guidance to covered employers and employees with regard to the FLSA and other statutes it administers and enforces, such as the Family and Medical Leave (FMLA), Davis-Bacon, Walsh-Healey Public Contracts, and McNamara-O'Hara Service

Contract Acts. The move will allow the WHD to respond to fact-specific requests rather than providing the more general Obama-era Administrator Interpretations, particularly on questions about the FLSA and FMLA.

The WHD has also created [a web page](#), containing information on existing guidance and the opinion letter process. It explains how to determine whether existing guidance already addresses specific issues and how to request an opinion letter. The WHD indicates it will use its discretion in determining to which requests it will respond, and the “appropriate form of guidance to be issued.”

In Closing

With the reinstatement of the WHD opinion letter process, employers will once again be able to seek individualized guidance to ensure that their employment practices are in compliance with the FLSA and other laws within the agency’s jurisdiction.

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