The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Recent DOL Opinion Letters: Key Takeaways and Employer Action Items

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The U.S. Department of Labor ("DOL") continues to use opinion letters as a mechanism for clarifying its interpretation of federal wage-hour and leave laws. These letters, while fact-specific, offer valuable insight into the DOL's current enforcement priorities and how the agency is likely to view common compliance questions under the Fair Labor Standards Act ("FLSA") and the Family and Medical Leave Act ("FMLA"). This update summarizes two of the six DOL opinion letters released early this month.

FLSA2026-1 – Learned Professional Exemption

FLSA2026-1 clarifies the learned professional exemption and the propriety of an employer's decision to reclassify an exempt employee as nonexempt. Under the learned professional exemption, an individual whose primary duty involves advanced knowledge in a science or learning field, acquired through prolonged study, that requires discretion and judgment, and who is compensated above a minimum salary threshold (currently $684/week federally) may be classified as exempt under the FLSA.

The DOL opined that even if an employee has the requisite training, education, experience, or duties to satisfy the learned professional exemption, it is not a violation of the FLSA for an employer to classify or reclassify the employee as non-exempt (i.e., hourly). The opinion letter makes it clear that an employer's decision to classify an employee as nonexempt is not a violation of the FLSA, so long as the employee is paid overtime as required by the FLSA.

The key takeaway of FLSA2026-1 is that if an employer reclassifies an employee as nonexempt, the employer must ensure the employee's time is tracked properly and pay overtime when it is earned.

FLSA2026-2 – Bonus Payments in Calculating Hourly Rate

FLSA2026-2 clarifies whether certain bonus payments may be excluded from the "regular rate of pay" calculation and, if not, how the bonus payments are accounted for in calculating an employee's overtime premium. The bonus payments at issue were earned under the company's plan that sought to promote safety, attendance, performance, and compliance with laws.

Under the FLSA, to determine an employee's regular rate of pay, the employer must divide the wages actually paid by the hours actually worked in any workweek. The FLSA permits an employer to exclude from the regular rate calculation certain types of bonuses paid in recognition of services performed during a given period. Whether a bonus may be excluded from the regular-rate-of-pay calculation turns on discretion. More specifically, if the decision to pay a bonus and the amount of the bonus are decided at the sole discretion of the employer, at or near the end of the subject pay period, and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments, the bonus is discretionary and does not need to be included in the regular-rate-of-pay calculation. Conversely, bonuses that are intended to incentivize favorable conduct must be included in the regular-rate-of-pay calculation.

The DOL opined that the company's plan was an incentive bonus. In reaching that opinion, the DOL noted that the "amount of the bonus is calculated using a predetermined plan to incentivize certain work performance." The DOL further noted that the company's plan identified criteria and correlating bonus amounts. Once an employee satisfied the criteria, the predetermined bonus was automatically triggered.

The key takeaway of FLSA2026-2 is that if your company has a bonus plan that serves to incentivize conduct, and the plan is structured in a manner that employees become automatically eligible for the bonus, that bonus amount must be included in the regular-rate-of-pay calculation.

While DOL opinion letters are not binding on courts, they provide important guidance on how the agency currently interprets and enforces federal employment laws. Employers should consider whether their existing pay, classification, and leave practices align with the principles reflected in these recent letters and evaluate whether updates, audits, or additional training may be warranted. We will continue to monitor developments from the DOL and are available to assist clients in assessing the impact of this guidance on their operations or in addressing specific compliance questions.

At Bassford Remele, we monitor administrative activity and guidance that may impact employers and their employees, and advise employers on the legal implications of the administrative activity and guidance.

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