

THE
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Department of Labor to Begin Issuing Opinion Letters, Again

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Secretary of Labor, Alexander Acosta, recently announced that the Department of Labor (DOL) will resume issuing opinion letters to provide employers with direction on compliance issues. Opinion letters are an official response from the DOL's Wage and Hour Division that provide employers with detailed explanations regarding how certain laws apply to the specific facts. Opinions are available to an employer for issues arising under the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and the Davis-Bacon Act (DBA). In a DOL press release, Secretary Acosta stated that issuing opinion letters will help employers and employees develop a better understanding of the laws and allow employers to "concentrate on doing what they do best: growing their businesses and creating jobs."

Historically, opinion letters were a tool for employers to obtain practical guidance on nuanced issues under the FLSA and FMLA. However, in 2010, the DOL stopped issuing opinion letters, offering only administrative interpretations, which are more generalized and not necessarily specific to a particular employer's set of facts.

Opinion letters allow employers to rely on the guidance provided in a DOL opinion letter in future litigation or administrative cases. Compliance with the advice provided in an opinion letter allows employers to assert a "good faith reliance" defense to legal claims. Additionally, other employers may rely on published opinion letters even if they did not request the opinion letter themselves, provided that the facts are similar to those described in the opinion letter.

The Wage and Hour Division has established a [webpage](#) which will collect opinion letters and give employers a vehicle to submit requests for new opinion letters. As before, the Wage and Hour Division will exercise discretion in determining which requests for opinion letters it will respond to.

The DOL's return to its prior approach is a welcome development for employers. Once again, employers seeking a specific answer on a compliance issue raised by a particular set of facts can seek official guidance before deciding upon a course of action.

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