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U.S. Department of Labor Reissues 17 Bush-Era Opinion Letters

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On January 5, 2018, the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) reissued 17 Opinion Letters that were previously issued in January of 2009 in the waning days of the Bush administration. The Obama administration promptly withdrew the Opinion Letters in March, 2009, “for further consideration.” Subsequently, the Obama DOL discontinued the practice of issuing Opinion Letters in favor of publishing more Administrator Interpretations.

The requirements of the Fair Labor Standards Act (FLSA) and the Family Medical Leave Act (FMLA) are established by statutes and regulations promulgated by the DOL. Employers or other interested parties may seek guidance from the WHD regarding interpretation of the FMLA and FLSA. In response, the WHD may provide official written explanations of the FLSA or the FMLA requirements through Opinion Letters. Notably, Opinion Letters are intended to be “fact-specific,” based on the facts presented in the individual inquiry.

The 17 re-issued Opinion Letters are fact-specific. Many of the re-issued Opinion Letters are based on specific job positions in specific industries, i.e., the exempt status of civilian helicopter pilots, the exempt status of project superintendents of a commercial construction company, and the exempt status of clinical coordinators and business development managers for a temporary medical professional provider. Other reissued Opinion Letters opine regarding calculating the regular rate of pay for firefighters and alarm operators under a collective bargaining agreement, the exempt status of client service managers at an insurance company, and the application of the retail or service exemption to plumbing sales/service technicians, compensation of “on-call” hours of ambulance personnel.

The Opinion Letters do not create “new law,” but rather may provide employers with guidance as they navigate the strictures of the FMLA and the FLSA. Employers concerned with whether a given Opinion Letter may apply to their specific problem would do well to discuss the matter with able counsel.

For a complete list of the re-issued Opinion Letters (including a link to the Opinion Letters), visit <https://www.dol.gov/whd/opinion/flsa.htm>.

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