

## Blog Post

# New U.S. DOL Opinion Letters Poised to Reshape Employers' FLSA and FMLA Practices

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The United States Department of Labor (DOL) just rang in 2026 with six new opinion letters addressing various employer practices under the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA). The letters cover a broad range of scenarios, including employer discretion to reclassify exempt employees, overtime calculations involving non-discretionary bonuses, compensability of pre-shift roll call time, partial overtime exemptions under collective bargaining agreements, the commission sales exemption (including the treatment of tips), and the calculation of FMLA leave during partial-week closures and for travel to medical appointments. These recent opinion letters are part of the DOL's ongoing efforts to provide practical guidance as an additional compliance tool.

## What Are DOL Opinion Letters, and Why Do They Matter?

The DOL describes its Opinion Letters as “official written opinions” issued by the Wage and Hour Division addressing how a particular law applies to the specific workplace situation presented by a requester – typically where the application of existing regulations or guidance is unclear. While these letters offer helpful and instructive guidance

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for employers navigating complex wage and hour or leave issues, they are not binding on courts and do not have the force of law. Importantly, employers who act in good-faith reliance on a DOL opinion letter may be able to assert a defense to liquidated damages in the event of a violation, even if a court later disagrees with the DOL's interpretation.

Because these letters are fact-specific and address only the circumstances presented, employers should exercise caution and consult legal counsel before relying on them in different factual scenarios.

### Summaries of Recent DOL Opinion Letters

Set forth below are highlights from each of the recently released opinion letters.

#### 1. Employers May Reclassify Employees from Exempt to Non-Exempt (FLSA2026-1)

A licensed clinical social worker was reclassified from exempt to non-exempt after losing supervisory duties due to internal restructuring. Although her primary duties still met the "learned professional" exemption, the DOL noted that a change to hourly compensation would likely disqualify her from the exemption's salary threshold. Ultimately, the DOL confirmed that it is the employer, not the employee, who determines whether to claim an exemption.

Employers may lawfully classify employees as non-exempt and pay overtime, even if the employee's duties would otherwise qualify for an exemption.

#### 2. Non-Discretionary Bonuses Must Be Included in Overtime Calculations (FLSA2026-2)

This letter clarified that performance-based, non-discretionary bonuses (such as those paid to waste management drivers) must be included in the "regular rate of pay" for purposes of calculating overtime under the FLSA. Because these bonuses are based on predetermined criteria, they must be

factored into overtime calculations for all workweeks in which they are earned.

### 3. Pre-Shift “Roll Call” Time Is Generally Compensable, with Exceptions for Certain Union Employees ([FLSA2026-3](#))

The DOL addressed whether a collective bargaining agreement (CBA) could exclude a 15-minute pre-shift “roll call” from overtime calculations. Generally, such time is compensable under the FLSA. However, two partial overtime exemptions may apply if the employee is covered by a CBA with a bona fide union. These exemptions allow for alternative overtime thresholds and maximum hour limits, provided specific CBA requirements are met. In the scenarios discussed, the additional roll call time would not exceed the maximum allowable hours under the exemptions.

### 4. Clarifying the Commission Sales Exemption and the Treatment of Tips ([FLSA2026-4](#))

This letter addressed two questions under the FLSA’s Section 7(i) overtime exemption for commission-earning employees of retail or service establishments. First, the DOL clarified that the federal minimum wage — not a higher state minimum wage — applies when determining eligibility for the exemption. Second, the DOL explained that tips are not “commissions,” but may count as “compensation” if used to meet wage obligations (e.g., through a tip credit). Tips not used to satisfy wage obligations may, in some cases, be considered commissions for purposes of the exemption.

### 5. Calculating FMLA Leave for Partial-Week Closures ([FMLA2026-1](#))

The DOL clarified that, during a partial-week closure (such as for inclement weather), closure days do not

count as FMLA leave unless the employee was scheduled and expected to work on those days. For example, if an employee is scheduled for FMLA leave on a day the workplace is closed and the employee is not required to report, that day should not be deducted from the employee's FMLA entitlement. However, if the employee is on FMLA leave for an entire workweek, the full week counts as FMLA leave, even if there is a closure during that period.

## 6. FMLA Leave May Be Used for Travel Time to Medical Appointments (FMLA2026-2)

The DOL confirmed that FMLA leave may be used for travel time to and from medical appointments for an employee's own or a qualifying family member's serious health condition. A medical certification does not need to estimate travel time to be considered complete. However, the travel must be related to a serious health condition; FMLA leave is not available for unrelated travel, even if the family member has a chronic condition.

### Practical Guidance and Legal Caution for Employers

DOL opinion letters are valuable resources for employers and their counsel, offering insight into the DOL's enforcement positions and practical guidance for compliance. However, they are not binding on courts and do not have the force of law. While reliance on a DOL opinion letter may provide a good-faith defense to liquidated damages under the FLSA or FMLA, employers should be mindful that courts may reach different conclusions, especially where the facts differ from those addressed in the letter. For further guidance on the FLSA, FMLA, or any workplace issue, consult your Akerman labor and employment attorney.

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