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DEPARTMENT OF LABOR PUBLISHES NEW WAGE AND HOUR OPINION LETTERS

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These are the key takeaways for employers.

The U.S. Department of Labor (DOL), through its Wage and Hour Division (WHD), issued three Opinion Letters on July 1, 2019 that address compliance issues under the Fair Labor Standards Act (FLSA). These Opinion Letters are the first to be published under current Wage and Hour Administrator Cheryl Stanton, who began her term in April 2019.

They address: (1) [the applicability of the highly compensated employee exemption for paralegals](#); (2) [the calculation of overtime pay for non-discretionary bonuses](#); and (3) [permissible rounding practices in recording employees' hours worked](#).

Employer Takeaways from the WHD Opinion Letters

DOL Opinion Letters are not law and courts are not bound by them, but they provide clarity on sometimes murky regulations.

We encourage employers to regularly review payroll practices and job descriptions, and to work with counsel to ensure that employees are properly classified as exempt or non-exempt.

As set forth above, the standards for determining who qualifies as a highly compensated employee may vary and proper analysis remains important to avoid the risks of misclassification. (Be aware that some states do not recognize a highly compensated exemption).

Employers must ensure that pay systems include payments of any non-discretionary bonus in determining overtime and that steps are taken to retrospectively recalculate employees' regular rates of pay during the bonus time period in calculating overtime.

Employers must also ensure that time-keeping systems round time in an appropriate manner consistent with the FLSA and applicable state regulations and that software systems are designed in a manner that is compliant with FLSA overtime requirements, as well as state wage and hour laws.

FLSA wage and hour issues are complex, and penalties for violations often provide for penalties for each violation as well as liquidated damages. Because the nature of the violations tends to involve across the board issues, penalties tend to be significant. We encourage our clients and all employers to consult with counsel to conduct regular self-audits to ensure compliance with the WHD requirements to avoid penalties and lawsuits.



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For Further Information

If you have any questions about this Alert, please contact [Marjorie Obod](#), [Katharine Hartman](#), or the attorneys in our [Labor and Employment Group](#) or the attorney in the firm with whom you are regularly in contact.