

LEGAL UPDATE

DOL Publishes Four Additional FLSA Opinion Letters

On Aug. 31, 2020, the U.S. Department of Labor (DOL) published four new opinion letters. Opinion letters provide the DOL's official position on how labor and employment standards, in this case the Fair Labor Standards Act (FLSA), apply in specific situations.

Retail Exemption for Truck Drivers

[FLSA2020-11](#) patterns the analysis employers must use to determine whether truck drivers working for a retail establishment qualify for the "retail or service establishment exemption." While the facts are specific to the gas and oil industry, the underlying principles have greater applicability.

Use of Personal Vehicle for Business

[FLSA2020-12](#) addresses whether to reimburse nonexempt hourly employees who use their vehicle to further their employer's business for expenses related to their vehicle, including: gas, oil, routine maintenance and repairs, fixed vehicle expenses, registration fees, license fees and insurance costs not required by the employer.

Exemptions for Part-time Employees

[FLSA2020-13](#) addresses how the learned professional exemption and the highly compensated employee test apply to part-time employees who provide training for a day rate with additional hourly compensation.

Fluctuating Workweek Clarification

[FLSA 2020-14](#) clarifies that the fluctuating work week overtime calculation method does not apply only to employees whose hours of work fluctuate above and below the 40-hour workweek threshold. This means that employers can use the fluctuating workweek method for employees whose hours of work fluctuate only above 40 hours per workweek.

Next Steps for Employers

Employers that rely on opinion letters may be able to establish a "good faith defense" under the law.

As a result, employers should review the scenarios discussed in these letters and determine whether this new guidance affects their current employee classification and payroll practices.

The public can search for existing opinion letters by keyword, year, topic and a variety of other filters on the DOL's [website](#).

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Provided to you by **Kinloch Consulting Group, Inc.** Sept. 3, 2020

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