



Picking Up The Pace: USDOL Tackling Overtime Updates and New Opinion Letters

Insights

8.28.18

As we wrote about ([HERE](#)) earlier this year, the Wage and Hour Division of the United States Department of Labor has been very active this year. This week alone, the USDOL issued a press release announcing that it will hold “listening sessions” in Atlanta, Seattle, Kansas City, Denver and Providence, “to gather views” on the white collar exemptions. Although it is not clear what, if any, new information USDOL will share during these sessions, USDOL says it “plans to update the Overtime Rule and is interested in hearing the views and ideas of participants on possible revisions to the regulations.” Our attorneys will update the blog with additional information following the event.

In addition to the listening sessions, USDOL also released 6 new Opinion Letters, 4 of which interpret the FLSA. The Opinion Letters involved (1) the application of a motion theater exemption to an establishment that is both a movie theater and a restaurant; (2) the volunteer status of “global credentialing examiners” (which is a fancy term for people who voluntarily grade tests); (3) the definition of a retail or service establishment under Section 7(i) of the FLSA; and (4) the compensability of time spent at wellness benefit fairs.

Although all four Opinion Letters contain valuable insights, the Opinion Letter interpreting section 7(i) of the FLSA is particularly helpful. In that letter, USDOL recognizes that sales to commercial customers (rather than the general public) can in some circumstances still qualify an employer as a retail or service establishment under the exemption. In other words, the fact that the employer’s customers are commercial businesses is not determinative. Although there is some case law that has interpreted 7(i) in this manner already, it is certainly an open legal question in many jurisdictions, and USDOL’s Opinion Letter will help many employers navigate what can be a tricky exemption.

The remaining opinion letters released today, while not ground breaking, provide helpful findings for employers. The Acting Administrator opined that a movie theater / restaurant combination can still fall under the FLSA’s movie theater exemption located at 13(b)(27). He also stated that volunteers who travel globally for 1-2 weeks a year to grade a test for a charitable organization do not need to be paid for their time, and that employees who voluntarily attend an employer-sponsored wellness fair (for which they receive no compensation / monetary benefit from their employer) are not engaging in compensable work.

The Bottom Line

The USDOL is picking up the pace as the summer draws to a close, though one has to wonder if the forthcoming tips regulations have been pushed back, or pushed aside, at this point. As we continue to receive new information, we will continue to keep you abreast of USDOL's actions.

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