

Labor & Employment Alert

New DOL Guidance on Salaried, Overtime-Exempt Employees In Light of Pay Deductions and Make-Up Time

Most employers (and labor attorneys) grapple daily with properly classifying and preserving the overtime-exempt status of their salaried employees under the Fair Labor Standards Act. On March 27, 2006, the Department of Labor issued two Opinion Letters addressing preservation of the overtime exemption in light of pay deductions and make-up time.

In Opinion Letter FLSA2006-7, the DOL opined that if employers deduct the pay of or require reimbursement from exempt employees who damage company property, then the employees lose their overtime-exempt status. The DOL reasoned that:

“deductions from the salaries of otherwise exempt employees for the loss, damage, or destruction of the employer’s funds or property due to the employees’ failure to properly carry out their managerial duties (including where signed “agreements” were used) would defeat the [overtime] exemption because the salaries would not be “guaranteed” or paid “free and clear” as required by the regulations. . . .”

The DOL also opined that such pay deductions could not lower overtime-non exempt employees’ pay below minimum wage, or adversely affect their entitlement to an overtime premium for working over 40 hours in a week.

In Opinion Letter FLSA2006-6, the DOL opined that employers can require exempt employees to make up time due to personal absences of less than a day without jeopardizing the employees’ overtime-exempt status – provided that employers do not dock the salary of the employees for failing to make up the time. The DOL further stated that employers may otherwise discipline employees for failing to make up the time without losing the overtime-exempt status.

The DOL’s Opinion Letters are very fact-specific, and therefore, should only be used as a general reference to help guide employers’ affairs.

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