

Insights

Department of Labor Issues New Opinion Letter Addressing Whether Exempt Employees May Be Paid on an Hourly Basis for Secondary, Non-Exempt Work

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The United States Department of Labor (“DOL”) recently issued a new opinion letter addressing how employers must pay employees under the Fair Labor Standards Act (“FLSA”). While opinion letters are not binding legal precedent, they provide helpful guidance to employers navigating thorny wage and hour issues.

Opinion Letter FLSA 2026-5 addresses whether an employee properly classified as exempt and paid on a salary basis under the FLSA may nevertheless be paid at an hourly rate for additional work performed in a secondary, non-exempt role. The opinion letter is particularly helpful given the potential overtime implications of such an employment arrangement.

In the opinion letter, the DOL discusses the example of a “Nursing Professional Development Specialist” (“Specialist”), who is paid as a salaried exempt employee because her main job functions are educational, but who occasionally picks up shifts as a staff nurse, which is an hourly position. The DOL advises that if a substantial majority of the employee’s time (approximately 40 hours per week) is spent in the Specialist role and a minority of the employee’s time (approximately 12-24 hours per week) is spent working as a staff nurse, the Specialist role remains the employee’s primary duty. In that scenario, and so long as the employee receives his/her full salary for all Specialist work performed in a week regardless of the number of hours worked, the employer may provide the employee with additional compensation paid on an hourly basis. Even though the Specialist picks up shifts as a staff nurse, which is ordinarily an hourly non-exempt position, the Specialist remains exempt from the FLSA’s minimum wage and overtime requirements.

The important takeaway for employers is that employees may still perform secondary, non-exempt work paid on an hourly basis without compromising the exempt status of their primary job. The clarity surrounding this issue may be especially helpful for employers whose salaried workforce steps in from time to time to help support the non-exempt duties of the business as needs arise. This often occurs in the health care setting. If you have questions about any wage and hour issues, including whether your employees are properly classified as exempt or non-exempt workers under the FLSA, please contact any member of the Labor and Employment team at Krieg DeVault, LLP for additional insight or assistance.

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