

## DOL Announces Reinstatement of Wage and Hour Division Opinion Letters for Guidance

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The Department of Labor announced on June 27, 2017, it will resume the issuance of Wage and Hour Opinion Letters which are written responses to questions presented by employers and employees (“Opinion Letters”). Opinion letters had been regularly issued until the Obama Administration discontinued the long-standing practice in 2010.

This reversion to prior practice gives the Wage and Hour Division (“WHD”) a platform that provides guidance to employers and employees and affords the opportunity to gain a better understanding of their rights and responsibilities under the Fair Labor Standard Act (“FLSA”), the Davis-Bacon Act, and other statutes for which the WHD has authority. The Opinion Letter process allows interested parties to ask the WHD whether specific practices are in compliance with the laws under its jurisdiction. If the WHD issues an Opinion Letter in response to such inquiries, it can serve as a tool for employers when crafting policies, and, if an employer reasonably relies on an Opinion Letter, such reliance may be used as part of a good-faith defense to allegations of wage and hour law violations.

Under the Obama Administration, instead of issuing Opinion Letters, the WHD issued a handful of Administrator Interpretations, which were “general interpretations” meant to offer guidance for an entire industry or group of employees rather than to one fact-specific scenario. According to Secretary Acosta, “Reinstating opinion letters will benefit

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employees and employers as they provide a means by which both can develop a clearer understanding of the Fair Labor Standards Act and other statutes. The U.S. Department of Labor is committed to helping employers and employees clearly understand their labor responsibilities so employers can concentrate on doing what they do best: growing their businesses and creating jobs.”

The reinstatement of Opinion Letters is a positive development that will provide guidance to employers, employees, attorneys, and the courts in understanding rights and responsibilities under the FLSA and other statutory schemes. If you are interested in obtaining an Opinion Letter from the DOL in the future or have any questions, please contact one of the attorneys in Koley Jessen’s Employment, Labor and Benefits Practice Group.