

HRAGC LEGAL UPDATE

JANUARY 18, 2018

FEDERAL

On January 5, 2018, the United States Department of Labor Wage and Hour Division reissued 17 Opinion Letters on a variety of topics relating to bonuses, salary deductions, exemptions and overtime. These letters were issued but later withdrawn in 2009 and reissued as the official statement of the WHD. They may be accessed at <https://www.dol.gov/whd/opinion/flsa.htm>. The list is copied below.

- FLSA2018-17 Construction supervisors employed by homebuilders and section 13(a)(1)
- FLSA2018-16 Volunteer fire company contracting for paid EMTs – joint employment and volunteer status
- FLSA2018-15 Product demonstration coordinators and section 13(a)(1)
- FLSA2018-14 Calculation of salary deductions and section 13(a)(1) salary basis
- FLSA2018-13 Fraud/theft analysts and agents under section 13(a)(1)
- FLSA2018-12 Consultants, clinical coordinators, coordinators, and business development managers under section 13(a)(1)
- FLSA2018-11 Job bonuses and section 7(e)
- FLSA2018-10 Residential construction project supervisor and section 13(a)(1)
- FLSA2018-9 Year-end non-discretionary bonus and section 7(e)
- FLSA2018-8 Client service managers and section 13(a)(1)
- FLSA2018-7 Salary deductions for full-day absences based on hours missed and section 13(a)(1) salary basis
- FLSA2018-6 Coaches and the teacher exemption under section 13(a)(1)
- FLSA2018-5 Regular rate calculation for fire fighters and alarm operators
- FLSA2018-4 Commercial construction project superintendents and section 13(a)(1)
- FLSA2018-3 Helicopter pilots and section 13(a)(1)
- FLSA2018-2 Plumbing sales/service technicians and section 7(i)
- FLSA2018-1 Ambulance personnel on-call time and hours worked

NEW HAMPSHIRE

On January 9, 2018, an amended version of HB 628, providing for a family and medical leave insurance program, was approved by House of Representatives by a vote of 183-151. It has now been referred to the Commerce and Consumer Affairs Committee. A work session is scheduled for next week. If approved by the Senate and signed by the Governor, this bill will establish a system of family and medical leave insurance (FMLI), effective January 1, 2019.

The law will apply to all nongovernmental employers and require deductions from wages on a weekly basis, which must be remitted by the employer to the Department of Employment Security on a quarterly basis. Employees may opt out provided required disclosures are made. Qualified employees are eligible for up to 12 weeks of FMLI in any one application period, provided they meet the minimum requirements for remittances and earnings.

PRACTICE POINTER

BEST PRACTICES TO AVOID EMPLOYEE CLAIMS

PREVENTION

- Develop a strong anti-harassment/anti-discrimination policy
- Develop detailed job descriptions and performance standards
- Require training of all supervisors and managers
- Be proactive and monitor the work environment
- Foster a working environment free of harassment and discrimination

HANDLING COMPLAINTS

- Take all complaints very seriously
- Develop a uniform protocol for responding and follow it-no shortcuts
- Promptly investigate all complaints and conclude them
- Remove interested persons from the process
- Document everything
- Fairly assess and honestly communicate the outcome

AVOID RETALIATION

- Be alert for signs of retaliation after protected activity
- Such as negative evaluation, layoff, no promotion, pay and bonuses, job change
- The victim, reporting person and witnesses could suffer retaliation
- The accused or friends of the accused could retaliate
- Respond quickly to any perceived retaliatory acts

DISCIPLINE/PERFORMANCE ISSUES

Pre-complaint

- Consider motives of supervisor
- Require objective data (that tracks written job description or standards)
- Follow consistent procedure

Post-complaint

- Treat complainant as any other employee
- Be skeptical of alleged performance issues
- Remove the accused from chain of command

MAKE CONCESSIONS

- Concede facts or issues and focus on the strongest points
- Avoid fights over wages (pay, overtime, personal days, tardiness)

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