

Wage and Hour Update: Opinion Letters, Overtime Thresholds, and Your Payroll Obligations

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Agenda

- DOL opinion letters 101
- 2026 opinion letters:
 - Four May 2026 letters (exempt/nonexempt work, bonuses, meal periods, rounding)
 - Two July 2026 letters (hybrid and field travel time)
 - Three September 2026 letters (meal periods, volunteering, tips)
- Technical amendment restoring 2019 salary thresholds
- OBBBA payroll obligations for tips and overtime
- Practical next steps and takeaways

Part 1

DOL Opinion Letters 101

What Is a DOL Opinion Letter?

- Official WHD interpretation of specific facts
- Good-faith reliance defense (Portal-to-Portal Act § 10)
- Persuasive, not binding on courts
- May vary from administration to administration
- Fact-specific ... and your facts may differ

Part 2

May/July 2026
Opinion Letters

FLSA2026-5: Dual Exempt/Nonexempt Roles

- Exempt employee picks up hourly nonexempt shifts
- Exempt status survives if primary duty stays exempt
- Extra hourly pay allowed under 29 C.F.R. § 541.604(a)
- Action: document separate roles, monitor primary duty, limit nonexempt work

FLSA2026-6: Percentage-of-Earnings Bonuses

- Bonus pool tied to total earnings can skip recomputation
- Must include overtime premiums in the earnings base
- Percentage increase can't shortchange overtime pay
- Action: audit bonus formula inputs

FLSA2026-7: Meal Periods and Off-Site Travel

- 30-minute meal period remains bona fide
- No duty to let employees leave premises
- Voluntary off-site travel doesn't create pay obligation
- Action: confirm complete relief from duty, check state laws

FLSA2026-8: Pre-Shift Work and Rounding

- Integral pre-shift tasks are compensable
- Waiting to clock in/out generally is not
- Rounding must be neutral, not one-sided
- Action: audit rounding and de minimis practices

FLSA2026-9: Mid-Day Commuting

- Employee-chosen split schedule = ordinary commute
- New third category of non-compensable time
- Key factor: who controls the timing
- Action: get it in writing, keep it voluntary

FLSA2026-10: Field Employee Travel

- Receiving pages/assignments: not compensable
- Scheduling calls: compensable, starts the workday
- Employer-dictated timing can make the drive compensable
- Action: review who controls field dispatch scheduling

Part 3

September 2026
Letters

FLSA2026-11: CBA Meal Period and Travel

- 60-minute meal period, up to 14 min. mandatory travel
- Still bona fide — ample time remains to eat
- Predominant benefit test controls, not "complete relief"
- Action: check net time after mandatory travel

FLSA2026-12 & -13: Volunteering and Manager Tips

- Volunteering is fine if freely given and uncompensated
- If it matches their paid duties, it's work — not volunteering
- Exempt employees: no extra pay required either way
- Aside: managers can't share in tip pools — niche, hospitality only

Part 4

Overtime Salary Thresholds Restored

Technical Amendment: 2019 Thresholds Restored

- 2024 rule vacated by federal courts -\$844 per week('24) and \$1,128 per week (\$58,656 annual)('25)
- Rule published on May 15, 2026 to reinstate the 2019 thresholds
 - \$684/week (\$35,568/annual; \$107,432 HCE
- No new obligation—WHD already enforcing these
- Action: re-audit duties, salary basis, salary level

Part 5

OBBBA Payroll Obligations: Tips and Overtime

OBBBA: Tips and Overtime Tax Deductions

- New federal income tax deductions, 2025–2028
- Withholding and FICA unchanged
- New 2026 W-2 reporting (Box 12 Code TT)
- Action: confirm payroll can separately code and report

Part 6

Practice Next Steps and Takeaways

Practical Steps: Auditing Pay Practices

- Re-verify exempt classifications (duties + salary)
- Audit bonus and rounding formulas
- Review meal period and travel time policies
- Confirm volunteer arrangements are truly voluntary
- Prepare payroll systems for 2026 W-2 reporting

Key Takeaways

Thirteen 2026 opinion letters, restored thresholds, and OBBBA—what to do now...?

- Opinion letters help, but read your own facts carefully
- Small structural details drive compliance outcomes
- Salary thresholds are *officially* back to 2019 levels
- Travel time turns on who controls the timing
- OBBBA changes reporting, not withholding

Thank You & Questions

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