

Dear HR Knowledge: What are DOL “Opinion Letters” and why should employers pay attention to them?

One way the [Wage and Hour Division](#) of the U.S. Department of Labor (DOL) issues guidance is through Opinion Letters. These letters reflect the DOL's position on how labor and employment standards apply in specific situations. These letters often provide guidance on complicated wage and hour topics that employers face. For example, on June 25, 2020, the DOL published five new opinion letters that clarify compliance issues with the Fair Labor Standards Act (FLSA), which can be found [here](#).

Some employees are exempt from the minimum wage and overtime pay provisions of the FLSA. These exemptions are left up to the employer to interpret, and employers often get it wrong due to the complexities around certain exemptions. An example of this is the often misclassified “sales role.” Two of the five Opinion Letters are related to the outside sales exemption of the FLSA, where in order to qualify for this exemption, an employee must be “making sales or obtaining orders” from customers and must be customarily and regularly engaged away from the employer's place of business.

In Opinion Letter [FLSA2020-6](#), an employer wrote in to the DOL asking whether their outside sales employees qualify for an FLSA exemption if they travel to different locations to sell products using the company's trucks. The DOL issued guidance saying that sales employees who spent four days of a five-day workweek driving to sell goods from the company's truck qualified for the outside sales exemption. The guidance concluded that these employees were making sales 80% of the time and were out on the road at various locations. Further, the trucks were not a fixed place of work, so these

This content is provided with the understanding that HR Knowledge is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice. If you have any questions regarding this content, please contact [HR Knowledge](#).



employees were not working out of a place of business.

In Opinion Letter [FLSA2020-8](#), an employer asked whether sales employees who set up displays and perform demonstrations at various retailers, not owned, operated, or controlled by their employer to sell the employer's products qualify for the FLSA exemption. The DOL issued guidance finding that these employees were in fact selling versus relying on third-party retailers to sell, and therefore do qualify for the outside sales exemption. However, the DOL mentioned that if the work is promotional, not selling, then they would **not** qualify for the exemption, illustrating that there are fine lines employers must be aware of related to the Outside Sales Exemption.

The Opinion Letter, [FLSA 2020-7](#), is related to the automobile industry where several car dealerships submitted requests for advice on incentive payments. These are monies that auto manufacturers pay to the dealerships to increase sales. The question was whether these incentives made directly to employees count toward minimum wage requirements. The DOL concluded they do count toward minimum wage obligations, a situation similar to tips given to servers and bartenders. However, the DOL made clear that **not all** third-party payments are considered wages under the FLSA; it all depends on the terms of the employment agreement, express or implied, as well as other requirements of the FLSA.

In summary, DOL Opinion Letters are insightful when it comes to technical wage and hour laws, but they are not binding in court; rather they serve as a tool for employers to use when making their wage and hour decisions, but they are just one tool and employers should work with their legal counsel or outsourced HR provider, such as HR Knowledge, when making these complex determinations.

The People Simplifying HR

For almost twenty years, HR Knowledge has made it our mission to demystify the complex and daunting process of HR management. We do more than just provide the level of service and technology you'd expect from an industry leader. We combine unparalleled passion for service with our decades of HR, payroll, and benefits experience to provide our clients with personalized and actionable advice that is second—to—none. From managed payroll to employee benefits to HR support, we can help your organization thrive, grow, and reduce operating costs—no matter what industry you serve. Whether you're interested in our Full-Service solution or just need your employee handbook written, HR Knowledge can help you minimize risk while staying on top of compliance regulations. The bottom line? We're not just another cloud-based technology company that also does HR, #WeAreHR. [Get the scoop](#) on how we can help you simplify HR.



@WEAREHRK