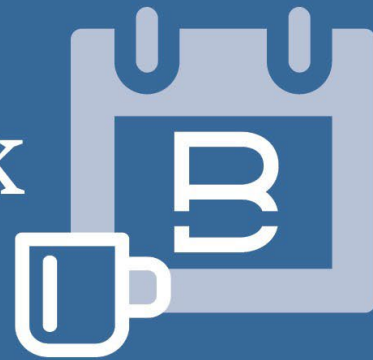


The Work Week

Bassford Remele Employment Practice Group



October 20, 2025

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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DOL's Recent Opinion Letters and What They Mean for Your Company

[Beth L. LaCanne](#)

The Department of Labor ("DOL") recently issued four opinion letters. While the opinion letters address very specific situations, they provide a glimpse into how the DOL interprets and enforces key wage and hour rules. The opinion letters serve as valuable guidance for companies across the board. In other words, even if your business isn't a sushi bar or a 12-hour shift factory, the principles outlined in these letters can still affect your policies and compliance strategies.

On June 2, 2025, the DOL announced a reinvigorated and expanded "opinion letter program" across several of its enforcement components. One of the enforcement components is the DOL's Wage and Hour Division ("WHD"). The WHD interprets laws such as the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA).

The WHD published four new opinion letters addressing FLSA and FMLA issues on September 30, 2025. The letters address tip pooling, FMLA, emergency pay, and joint employment.

- *Tip Pooling*

The FLSA allows an employee's tips to count toward meeting the minimum wage requirement. This is often called "tip credit." Under the FLSA, only employees who routinely receive tips may be part of a mandatory tip pool, so long as the employer takes a tip credit. The FLSA2025-3 opinion letter addresses whether front-of-house oyster shuckers who have direct customer contact are employees who routinely receive tips. The front-of-house employees at issue did not receive tips directly from customers; however, due to their interactions with guests, they qualify

for tip pooling. In contrast, back-of-house shuckers who do not interact with customers do not qualify for tip pooling.

Employers who take a tip credit, when determining whether an employee qualifies for tip pooling, must consider whether and how much interaction the employee has with customers while performing service-type functions.

- *Emergency or Premium Pay*

The FLSA2025-04 opinion letter addresses the impact of extra pay for atypical work in determining an employee's regular rate of pay. Accurately determining an employee's regular rate is significant because it impacts the amount an employer must pay that employee for overtime. The opinion letter states that pay during declared emergency periods for firefighters must be included in calculating their regular rate to determine the overtime rate of pay.

The opinion letter has potential implications for employers who have emergency pay, hazard pay, standby bonuses or similar incentives during emergencies or other crises. In summary, the premium pay must be included in the regular rate, even if already paid at a higher rate, which has implications for overtime pay calculations.

- *Joint Employment*

The FLSA2025-05 opinion letter addresses joint employment. In the letter, the DOL states that when joint employment exists, the employee's hours must be combined to determine whether overtime applies. The letter also states that the entities may be jointly liable if the employee was not paid minimum wage and/or overtime. Factors that implicate joint employment include shared ownership or management, shared facilities, coordinated scheduling, shared control, etc.

When engaging staffing agencies or where multiple businesses are operated from the same location, and an employee works for more than one of the businesses, companies should be cognizant of the joint employment rule.

- *FMLA Leave Calculation*

The FMLA provides eligible employees up to 12 weeks of leave, during which their job is protected. In the FMLA2025-02-A opinion letter, the DOL analyzed the calculation of FMLA leave entitlement for employees working on a nonstandard schedule, such as 12-hour shifts with mandatory overtime. The DOL concluded that the employer must convert the employee's normally scheduled hours into an hourly equivalent (e.g. 12 hours plus mandatory overtime) to determine the amount of FMLA leave to which the employee is entitled.

While the DOL's opinion letters may not carry the force of law for every employer, they offer valuable insight into how the agency views key issues — and that's often as close to a compliance

roadmap as you're going to get. These letters are a reminder to regularly review policies, train managers, and fine-tune payroll practices before small issues turn into major liabilities. After all, when the DOL takes the time to spell it out, it's probably worth reading — and responding accordingly.

At Bassford Remele, we monitor legal trends at the state and federal level, including significant administrative guidance that may impact employers, and advise employers on the implications of the decisions, such as the need to update policies and procedures to ensure compliance with state and federal laws.

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