

PUBLICATION

DOL Opinion Letters under FLSA? Not Anymore.

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On March 24, 2010, the U.S. Department of Labor's Wage and Hour Division announced that it would no longer issue opinion letters under the Fair Labor Standards Act. This was the first announcement made along with an interpretation during the Obama administration.

The administrator's interpretation held that the FLSA administrative exemption does not apply to mortgage loan officers because these officers "typically have the primary duty of making sales of behalf of their employer." The significance of this interpretation was that it served to reject a 2006 opinion letter released during the Bush administration. The prior opinion provided a narrow interpretation of sales duties and accepted the employer's statement that the exemption applied because loan officers spent less than fifty percent of their working time in sales activities. (See our full alert on this issue [here](#).)

The DOL announcement stated that interpretations would be issued only when "further clarity regarding the proper interpretation of a statutory or regulatory issue [relates] ... to an entire industry, category of employees or to all employees." Shortly afterward, the DOL also announced that it was launching a new campaign aimed at cracking down on wage and hour violations and educating employees about their rights under the Fair Labor Standards Act.

Prevailing thought is that the Department of Labor under the Obama administration is becoming far less employer friendly. By moving beyond the scope of traditional fact presented opinion letters, the DOL is expanding its sub-regulatory mission and will likely issue more broad pronouncements. DOL asserts that the move is not based upon politics but is meant to provide more "meaningful and comprehensive guidance and outreach to the broadest number of employers and employees." However, it is contrary to the agency's long-time practice of responding to specific fact opinion requests. It is also contradicts the agency's prior reliance on using actual job duties instead of generalized job titles when issuing opinions.

In light of this announcement and interpretation, employers are recommended to take a close look at those job descriptions for which they rely on the administrative exemption.

We keep you up to date on all the latest happenings at the Department of Labor. If you need assistance with FLSA matters or any labor and employment issue, do not hesitate to contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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