

# Electronic Alert

Volume 21, Issue 15

August 30, 2018

## The Department of Labor Issues Flurry of New Opinions

By [Josh Goldberg](#) & [Gabrielle Hansen](#)

This week, the U.S. Department of Labor (DOL) issued six opinion letters interpreting the Fair Labor Standards Act (FLSA) and Family and Medical Leave Act (FMLA). The opinion letters often address specific industries or narrow questions, providing technical advice and a safe harbor defense for employers that rely on the decisions in good faith. The most recently issued decisions were as follows:

- FLSA’s [overtime exemption](#) for employees at a movie theater extends to food service staff for an on-site restaurant because the employees work for the same establishment.
- Employers must provide [FMLA leave](#) for organ donations, because organ donation surgery is a “serious health condition,” when it involves inpatient care or continuing treatment such as an overnight stay at a hospital.
- Under [no-fault attendance policies](#), employers may freeze the amount of points employees have accrued while they are out on FMLA leave because FMLA does not entitle employees to superior benefits or position simply as a result of taking FMLA leave.
- Under FLSA, a nonprofit organization does not compromise a volunteer’s status by paying [for expenses](#) incidental to volunteering, such as travel, lodging, and meals, without compromising the individual’s volunteer status, so long as the volunteers perform their duties for public service and without undue pressure.
- A technology company that builds and sells an online payment platform falls under FLSA’s “[retail or service establishment](#)” overtime wage exemption when the technology cannot be resold and the company does not make wholesale sales. As such, employees whose commissions constitute more than half of their earnings and whose regular rate of pay exceeds one and one-half times the minimum wage are exempt from overtime requirements.
- Time participating in [voluntary “wellness activities”](#) such as biometric screenings and benefits fairs is not necessarily compensable under FLSA, as participation primarily benefits the employee, even if this programming occurs at work and during regular work hours.

For more information or specific questions, contact Gabrielle Hansen at [ghansen@barran.com](mailto:ghansen@barran.com) or (503) 276-2112 or Josh Goldberg at [jgoldberg@barran.com](mailto:jgoldberg@barran.com) or (503) 276-2107. You can also register [here](#) to learn more about leave law compliance as well as wage and hour issues at our upcoming Annual Seminar on September 27, 2018.