

## DOL Issues New Opinion Letters On Wage And Hour Issues – Compensability Of Health-Related Rest Breaks

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The DOL recently issued three new Wage and Hour opinion letters on its website giving employers additional guidance on compensation for travel time, pay for health-related rest breaks as well as whether lump sum payments are subject to garnishments. This demonstrates the commitment of the DOL to re-establish the opinion letter program which was eliminated during the Obama administration. Back in January, the DOL re-issued 17 opinion [letters](#) issued by the Bush administration nine years ago but which had been withdrawn during the Obama administration. For years, opinion letters have been useful for employers who requested guidance on the application of the law to a particularized set of facts. In particular, the health-related rest break opinion letter is interesting as it addresses both wage and hour compensability issues as well as the interaction with FMLA intermittent leave. In the letter, the employer asks if an employee is entitled to be paid for 15 minutes regardless of how many breaks the employee takes throughout the day as required by medical necessity (in this case two hours of breaks). The confusion comes from FLSA regulations which state that “rest periods of short duration, running from five minutes to about 20 minutes. . . must be counted as hours worked.” 29 C.F.R. § 785.18 (emphasis added). The employer had several employees whose doctors certified that they needed 15 minute breaks every hour for their serious health conditions as FMLA reduced schedule leave. Taken literally, the FLSA regulations would appear to mandate two hours of paid rest time throughout the day for the 15 minute breaks. Thankfully, the DOL clarified that while rest breaks up to 20 minutes are “generally compensable,” where the breaks are primarily for the employee’s benefit as a medical accommodation, they do not have to be paid. This is consistent with the FMLA regulations that only mandate unpaid leave. However, if the employer already permits other paid short breaks, the employee would be entitled to be paid for those breaks on the same basis as other employees. This would also presumably apply for ADA reasonable accommodation breaks for those employees who are not eligible for FMLA leave. Employers should check the DOL webpage periodically as the Opinion Letters may provide helpful guidance for Wage and Hour guidance in the future.

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