

JANUARY 22, 2026 | WAGE & HOUR COMPLIANCE

Reading the Tea Leaves: What are the Wage and Hour Division's Priorities in Year Two of Trump 2.0

BY SCOTT HECKER

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With a little more than a year of the Second Trump Administration in the books, we are getting a better idea of the President's priorities, including at the U.S. DOL's Wage and Hour Division ("WHD"). Rulemaking plans described by the current Spring 2025 Unified Agenda are **limited**, but there are other avenues to deduce WHD's points of emphasis, for example, through [press releases](#) and [opinion letters](#). This blog entry focuses on the latter, including a recent batch representing the first letters signed by WHD Administrator Andrew Rogers, who was confirmed by the Senate on October 7, 2025, during the government shutdown.

WHD Opinion Letters

Opinions issued by DOL cover numerous statutes, but we will address some recent activity concerning the Fair Labor Standards Act ("FLSA"). According to the Department, opinion letters represent "an official ruling or interpretation of the Wage and Hour Division," and "[s]uch rulings provide a potential good faith reliance defense for actions that may otherwise constitute violations of the FLSA"

2025

In 2025, WHD issued five FLSA opinion letters, which addressed, generally, tip pooling, application of the Act's overtime requirements, what to include in/exclude from the regular rate for overtime, and when an individual is an employee versus an independent contractor. Viewing the Department's press releases and through our recent experience with the government's enforcement priorities, these represent key wage-hour areas for employer compliance.

2026

Indeed, the latest opinion letters issued on January 5, 2026, under Administrator Rogers' signature cover many of the same broad topics. More specifically:

- **FLSA2026-1** concerns the learned professional exemption from overtime.
- **FLSA2026-2** addresses the exclusion of certain bonus payments from the regular rate for overtime.

- **FLSA2026-3** considers whether employers can exclude pre-shift “roll call” time when calculating overtime (specifically under a collective bargaining agreement, but the letter could have broader implications).
- **FLSA2026-4** involves which minimum wage to use, state versus federal, when the state rate is higher, regarding the 7(i) overtime exemption, and whether tips count as compensation when evaluating if the exemption applies.

We found FLSA2026-2 particularly interesting when considering it from a workplace safety perspective, since it tackles how incentive bonuses under a company’s “Safety, Job Duties, and Performance” bonus plan should be factored into the regular rate for overtime pay. WHD concluded that an employer must include the bonus payments in the regular rate of pay in any workweek for which they are earned, because such payments are incentives and do not qualify as a discretionary bonus or meet any other section 7(e) exclusion. Accordingly, the employer has failed to pay in full the overtime premium—i.e., the “half-time” premium—to employees who received the safety, job duties, and performance bonus.

FLSA2026-2 at 1-3. Not every safety incentive plan will be implicated by this opinion, but these are the kinds of issues Trump’s WHD will be evaluating for compliance.

While not going away completely, government enforcement resources and activity are waning, so now is the perfect time for employers to reduce investigatory exposure by auditing their pay practices and confirming their policies and procedures comply with applicable obligations. Conn Maciel’s nationwide [Labor & Employment Practice Group](#), particularly its wage-hour practitioners, stands ready to assist.

In the meantime, join CMC attorneys [Lindsay A. DiSalvo](#) and [Scott Hecker](#) for a webinar TODAY at 1 p.m. ET to cover this very topic and more. See below for more information and to register.

[Insights into Wage and Hour Investigations](#)

Thursday, January 22, 2026, at 1 pm ET

With over a year of President Trump’s second term under our belts, the current administration’s priorities have begun to take shape. While we expect enforcement activity to decrease during President Trump’s second term, wage and hour investigations are still happening, so employers must be ready to demonstrate compliance when the Wage and Hour Division (“WHD”) shows up at their doors. In addition to identifying WHD’s current points of emphasis and primary areas of concern, this webinar will take you through the stages of an investigation and some tips for handling various aspects of the investigation process.

Participants in this webinar will learn:

- Enforcement priorities and concerns in Trump 2.0, including overtime exemptions, worker classification, tipped wages, and overtime/calculating regular rate of pay
- General stages of a WHD investigation
- Best Practices/Tips for managing a WHD investigation

[Click here to register](#) for the January 22nd webinar.

