DOL Issues Three New Opinion Letters

On January 7, 2020, the U.S. Department of Labor published three new opinion letters that every employer should review.

The first involves an **employer's nondiscretionary bonus** payment of $3,000 given to employees who completed ten weeks of training with a promise to complete eight more weeks. During the 10-week training period, employees only worked overtime in two weeks. The DOL concluded that because the employer paid the lump sum bonus for completing the ten-week training and agreeing to the additional training without having to finish it, the bonus must be allocated to the initial ten-week period. It was appropriate for the employer to allocate the $3,000 equally to each week.

In the second letter, the DOL determined that a **per-project payment method satisfies the salary basis regulations for exemption under the FLSA**. The inquiry provided two proposals for how the company would pay employees assigned to projects that lasted various periods of time. In the first proposal, when the employee receives a predetermined amount that does not vary from period to period based on the number of hours worked, the payment satisfies the salary basis requirements. In the second proposal, where the employee is paid a bona fide salary plus additional compensation, even in the form of a weekly lump sum, the payment also satisfies the salary basis and extra compensation requirements under the regulations. The DOL noted that where the fee for the project might be renegotiated during the course of the project, the salary basis test can still be met so long as the salary meets the minimum threshold and the changes to the weekly pay are not so frequent as to undermine the theory that the employee is actually being paid a salary, rather than being paid based upon quantity or quality of work performed.

The third letter addressed **compliance under the Family Medical Leave Act ("FMLA")**, with the DOL opining that a general health district is not required to consider all other county employees when determining whether one of its employees qualifies for FMLA leave as the health district and the county did not appear to be a single public agency employer. The DOL considered several factors in reaching this decision, including: whether the health district had its own payroll and retirement systems, whether it had its own funding sources and budget, whether it hired its employees separate from any other agency, whether it could sue and be sued, and whether state law provided any clarity as to the status of the entity.