

Employers Council, the nation's largest employers association, has provided expert assistance and thoughtful guidance to employers since 1939. We collaborate with our members to develop effective, successful employer-employee relationships by providing "one-stop shopping" in every facet of human resources and employment law. Employers Council offers the broadest array of professional services under one roof. We walk alongside our members, offering guidance, support and expertise.

For more information about our services, contact the Utah office at 801.364.8479 or [SaltLakeCity@EmployersCouncil.org](mailto:SaltLakeCity@EmployersCouncil.org).

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## **New DOL Guidance on Common Wage and Hour Issues**

April 12, 2018 / Employers Council

The Department of Labor (DOL) was active in the field of wage and hour law on April 12, 2018, issuing new guidance on topics such as compensability of travel time, compensability of frequent rest breaks due to a medical condition, and exemptions for employers in higher education. Please review our synopses below to determine whether the new guidance may be useful for your workforce.

**Opinion Letter: Compensability of Travel Time** - In Opinion Letter 2018-18, the DOL worked through various scenarios involving compensability of travel time for field technicians. The questions presented to the DOL discuss common scenarios faced by employers with traveling hourly, nonexempt employees. Although the DOL applies existing rules to reach its conclusions, this Opinion Letter may give insight to employers who are uncertain whether to pay nonexempt, hourly employees for time spent traveling. The scenarios include compensability of travel time that occurs: by plane to an out-of-town site for training, to the office to pick up an itinerary before traveling to client sites, and from home to temporary work sites throughout the day. *The full text of FLSA Opinion 2018-18 may be found [here](#).*

**Opinion Letter: Compensability of Frequent Rest Breaks Due to a Medical Condition** - In Opinion Letter 2018-19, the DOL addressed the issue of compensability for frequent rest breaks taken due to a medical condition certified under the Family and Medical Leave Act (FMLA). The issue presented was whether an employee who takes frequent rest breaks due to an FMLA-certified medical condition that exceeds the number of breaks granted by an employer and/or by law should be paid for such breaks. Employers may be relieved to know that only the paid rest breaks ordinarily granted by the employer to all employees are compensable, whereas the additional rest breaks due to the medical condition may be uncompensated. *The full text of FLSA Opinion 2018-19 may be found [here](#).*

**Fact Sheet #17S: Higher Education Institutions and Overtime Pay** - In its newest Fact Sheet #17S, the DOL examined various overtime exemptions that typically apply to institutions of higher education. Among these exemptions are those for teachers, coaches, academic administrative personnel, student-teachers, research assistants, and more. In addition, this Fact Sheet discusses the availability of compensatory time (i.e. time off in lieu of overtime payment) for institutions of higher education, hinging its analysis primarily on whether the institution qualifies as a "public agency." *The full text of FLSA Fact Sheet #17S may be found [here](#).*

**PAID Program Up and Running** - Finally, the DOL's Payroll Audit Independent Determination (PAID) Program, whereby employers may voluntarily self-correct a variety of minimum wage and overtime related payroll issues with reduced risk of litigation, is active. Employers who identify compliance issues with federal wage and hour laws may wish to consider utilizing this program in order to correct noncompliant practices. *The official website of the PAID Program is accessible [here](#), along with a list of commonly asked questions.*

**Field Assistance Bulletin 2018-2** - In addition, in January 2018, the DOL revised its guidance on maintaining unpaid interns for private sector employers. This new guidance, by way of Field Assistance Bulletin 2018-2 and revised Fact Sheet #71, replaces the old "six-factor" test with the primary beneficiary test, which includes seven factors, of which no one factor is conclusive regarding whether an unpaid intern must be paid for their work. *The full text of revised Fact Sheet #71 may be found [here](#).*

**Employers Council Audit Services and Defense Representation** - Employers Council members who have questions or identify concerns related to wage and hour compliance, or who are considering the PAID Program, should consult legal counsel prior to taking action. Employment Law Services attorneys offer for-fee audits to examine compliance with this complex area of employment law. In addition, wage claim defense representation is available under membership or various for-fee programs, depending on the state in which the claim is filed.