



WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR

The U.S. Department of Labor's Wage and Hour Division today announced it has withdrawn two opinion letters about policies under the Fair Labor Standards Act, FLSA2019-6 and FLSA 2019-10.

As WHD announced on February 5, 2021, the agency has proposed to delay the effective date of its final rule entitled "Independent Contractor Status Under the Fair Labor Standards Act" to allow WHD additional opportunity for review and consideration of the rule. Opinion Letter FLSA2019-6 addressed the same issue under consideration by the Department—independent contractor status under the FLSA. Consistent with its proposed delay of the final rule, WHD is withdrawing this opinion letter.

Opinion Letter FLSA2019-10 was inconsistent with longstanding WHD interpretations regarding the compensability of time spent in a truck's sleeper berth. Several courts have declined to follow this letter, determining, among other reasons, that it was inconsistent with the Department's regulations; unpersuasive; and not entitled to deference, in part because the letter did not adequately explain WHD's change in position. These courts have instead continued to follow the Department's longstanding prior position. To the extent that FLSA2019-10 withdrew prior opinion letters, those letters are reinstated.

These withdrawals are official rulings of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259, and opinion letter FLSA2019-6 and FLSA2019-10 may not be relied upon as a statement of agency policy as of the dates of withdrawal.



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