

## CUT AND PASTE POST JANUARY, 2019

### The Affordable Care Act is Still the Law of the Land

According to the SHRM website, the Texas Federal Judge's December 7, 2018 ruling that the Affordable Care Act (ACA) is unconstitutional does not have any effect on the ACA and how it operates. Because the ruling did not enjoin the law, all current provisions of the ACA, including the employer mandate, protections for pre-existing conditions, and eligibility for children up to age 26, continue to apply.

This also means that all requirements pertaining to employers, including the employer mandate (so-called play or pay) and employer information reporting rules, continue in effect.

### ACA Reporting Requirements and Deadlines

On November 29, 2018, the IRS released [Notice 2018-94](#), extending the due date for employers to furnish the ACA's 2018 Form 1095-C or 1095-B form to individuals.

[Notice 2018-94](#) establishes the following due dates:

- Employees and individuals are to receive 2018 Form 1095-C, or Form 1095-B, if applicable, by March 4, 2019 (extended from January 31, 2019).
- **The deadline for filing copies** of the 2018 Forms 1095-C, along with transmittal Form 1094-C (or copies of Forms 1095-B with transmittal Form 1094-B) **with the IRS has not changed**. They are still due:
  - February 28, 2019, if filing by paper.
  - April 1, 2019, if filing electronically.

Below are links to the final forms and instructions on the IRS website (read the Instructions to see which form, if either, applies to you):

- [Instructions for Forms 1094-C and 1095-C](#)
  - Transmittal [Form 1094-C](#) to accompany Form 1095-C.
  - [Form 1095-C](#), Health Coverage
- [Instructions for Forms 1094-B and 1095-B](#)
  - Transmittal [Form 1094-B](#) to accompany Form 1095-B
  - [Form 1095-B](#), Health Coverage.

The IRS also issued Publication 5223, [General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C](#), which describes how employers may prepare substitute forms to furnish ACA reporting information to individuals and the IRS.

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## U.S. DOL 2018 Opinion Letters



As part of the administration of the Fair Labor Standards Act (FLSA) and the Family Medical Leave Act (FMLA), interested parties may seek and officials of the Wage and Hour Division (WHD) may provide official written explanations of what the FLSA or the FMLA requires in **fact-specific** situations.

Opinion letters may be signed by the Wage and Hour Division Administrator or a lower level official. Opinion letters **issued by the Administrator** may be relied upon, pursuant to Section 10 of the Portal-to-Portal Act, 29 U.S.C. § 259, as a good faith defense to wage claims arising under the FLSA. These letters can be a great resource as you research FLSA and FMLA compliance and day to day issues.

In January, 2018, after a 9 year delay, the U.S. Department of Labor resumed its practice of issuing Opinion Letters. Here is a table of Fair Labor Standards Act Opinion Letters which were issued by the Administrator in 2018, and which may have general applicability and/or interest to GVHRA members. All Opinion Letters may be found [here](#).

Date	Subject	Link
12/21/2018	Determining minimum wage and overtime compliance for employees with varying average hourly rates	<a href="#">FLSA2018-21</a>
11/8/2018	Dual jobs and related duties under section 3(m)	<a href="#">FLSA2018-27</a>
	“Reasonable relationship” between salary paid and actual earnings	<a href="#">FLSA2018-25</a>
8/28/2018	Retail or service establishment and the 7(i) exemption	<a href="#">FLSA2018-21</a>
	Compensability of time spent attending employer-sponsored benefits fairs	<a href="#">FLSA2018-20</a>
4/12/2018	Compensability of frequent rest breaks required by a serious health condition	<a href="#">FLSA2018-19</a>
	Compensability of travel time	<a href="#">FLSA2018-18</a>
1/5/2018	Construction supervisors employed by homebuilders and section 13(a)(1)	<a href="#">FLSA2018-17</a>
	Calculation of salary deductions and section 13(a)(1) salary basis	<a href="#">FLSA2018-14</a>
	Consultants, clinical coordinators, coordinators, and business development managers under section 13(a)(1)	<a href="#">FLSA2018-12</a>
	Job bonuses and section 7(e)	<a href="#">FLSA2018-11</a>
	Residential construction project supervisor and section 13(a)(1)	<a href="#">FLSA2018-10</a>
	Year-end non-discretionary bonus and section 7(e)	<a href="#">FLSA2018-9</a>
	Client service managers and section 13(a)(1)	<a href="#">FLSA2018-8</a>
	Salary deductions for full-day absences based on hours missed and section 13(a)(1) salary basis	<a href="#">FLSA2018-7</a>
	Coaches and the teacher exemption under section 13(a)(1)	<a href="#">FLSA2018-6</a>
	Commercial construction project superintendents and section 13(a)(1)	<a href="#">FLSA2018-4</a>
	Plumbing sales/service technicians and section 7(i)	<a href="#">FLSA2018-2</a>
Ambulance personnel on-call time and hours worked	<a href="#">FLSA2018-1</a>	

### Montana Legislative Session

The Legislative process begins on January 7<sup>th</sup>. Nothing new to report yet: check back for more information.

### White Collar Rule Update

The U.S. DOL has now said it intends to publish a new proposed rule in March, 2019, rather than in January or February of 2019. You’ll know as soon as we know!