

Navigating New DOL Opinion Letters: Implications for Tip Pooling and Coordinating Paid Family Leave Benefits With FMLA Leave

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On January 14, the US Department of Labor's (DOL) Wage and Hour Division (WHD) published two opinion letters, FLSA2025-1, which addresses tip pooling under the Fair Labor Standards Act (FLSA), and FMLA2025-1-A, which provides guidance on how employers may coordinate paid family leave benefits with leave taken under the Family Medical Leave Act (FMLA).

FLSA2025-1: The Tip Pooling Letter

In restaurants and other service-based establishments, customer tips are often collected and pooled for employees to share. It is well understood that employees working in a management capacity cannot share in tip pools under the FLSA. FLSA2025-1 focuses on whether managers and supervisors can lawfully share in tips when they work in a *non*-management capacity. The following two scenarios were discussed in the letter:

1. Can a Team Lead or Assistant Team Lead who is a manager for purposes of the FLSA, but who clocks in and works a shift in a non-management capacity, participate in a tip pool for that particular shift?
2. Can a Shift Lead, who is not a manager for purposes of the FLSA, but who is the highest-ranking employee during a particular shift, participate in a tip pool during that shift?

Regarding Team Leads and Assistant Team Leads, the WHD determined that, if the manager in question qualifies as an exempt executive employee and, therefore, is primarily engaged in exempt-level duties, then they may *not* receive any tips from a tip pool. To permit an individual whose primary duty is management (based on their job as a whole) to receive tips from a tip pool simply because the employee happened to engage in non-management duties on a particular shift would circumvent the FLSA's general prohibition against allowing managers to draw from employee tip pools.

However, the WHD found that if the Shift Leads in question do not qualify as exempt executive employees, then they *may* share in a tip pool, even on those shifts when they are the most senior employee working at the establishment. Unlike an exempt Team Lead or Assistant Team Lead, their primary duty is not management-level work. As such, allowing a non-exempt Shift Lead to share in a tip pool would not circumvent the goals of the FLSA.

The key takeaway from FLSA2025-1 is that employers should remain extremely cautious when it comes to allowing management-level employees to share in tip pools. If those employees qualify as exempt for overtime purposes, they should not be permitted to share tips even when they perform non-exempt tasks.

FMLA2025-1-A: Coordination of FMLA and Paid Family Leave Benefits

The second opinion letter, FMLA2025-1-A, focuses on the coordination of benefits employees receive from paid family leave programs with protected leaves of absence under the FMLA. A growing number of state and local governments have implemented paid family leave benefits where employees receive paid time off (PTO) for reasons such as personal medical issues, family care, and parental bonding. These plans vary widely in their scope and the duration of benefits they provide.

Under the FMLA, if an employee's protected leave is *unpaid*, the employer may require the employee to use any accrued vacation, PTO, or sick time the employee may have. However, the rule has long been that, if the employee's protected FMLA leave is *paid* through workers compensation or disability benefits, then the employer may not require the employee to use any of their accrued vacation, PTO, or sick time.

In FMLA2025-1-A, the WHD decided that employers are likewise prohibited from requiring employees to use accrued vacation, PTO, and sick time if they are on a protected FMLA leave while receiving compensation from a paid family leave program. For example, if the employee is on a 12-week FMLA leave and the first four weeks are paid through a state-law family leave program, the employer cannot require the employee to use their vacation/PTO/sick hours (although the employee and the employer may voluntarily agree to such an arrangement). However, for the last eight weeks of the FMLA leave, which are unpaid through the state benefits program, the employer can require the employee to use their accrued time off hours.

With the ever-expanding number of both paid and unpaid employee leave programs under state and local laws, it is important to stay abreast of how those rights interact with the rights under the FMLA. FMLA2025-1-A highlights when employers may lawfully require employees to use their accrued vacation, PTO, and sick hours, an issue that regularly causes confusion for many human resources and payroll professionals. It is thus an appreciated piece of guidance.