



**FORDHARRISON**

YOUR PARTNER IN EMPLOYMENT LAW

# Loudon Monroe Seminar 2026

**FLSA Update**

**April 8, 2026**

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# FLSA Update

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DOL Wage and Hour Division issued a proposed rule defining “independent contractor” under FLSA, FMLA and Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

Public comment period runs through April 28, 2026





# FLSA Update

Two factors are given the most weight.

One is the nature and degree of control over the work.

- Set work schedule
- Choose assignments
- Work with little or no supervision
- Able to work for others

# FLSA Update

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Second is the individual's opportunity for profit or loss.

- Can increase profit or incur loss based on exercise of initiative
- Managerial skill, business acumen
- Management of investment in capital, helpers or equipment





# FLSA Update

If both factors are met, the person is very likely to be found an independent contractor.

If the core factors point to different conclusions or are unclear, the following factors will be considered.

# FLSA Update

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The amount of skill required for the work.

Does the individual have specialized skill or training that the employer does not provide?



# FLSA Update

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The degree of permanence of the working relationship between the individual and the potential employer.

Is the relationship by design of definite duration, or sporadic?



# FLSA Update

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Whether the work is part of an integrated unit of production.

Is the work separate from the employer's production processes?



# FLSA Update

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The focus of the analysis is on the actual practice of the parties, versus what may be contractually or theoretically possible.

Different from 2024 rule, which provided that reserved contractual rights could weigh heavily in the analysis.



# FLSA Update

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- » This is a federal DOL proposed rule. It does not impact State rules, some of which are more restrictive.

# FLSA Update

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Compensable time lawsuits.

April 1, 2026 decision in a case against Amazon in New York.

Employees required to undergo security screenings before and after their shift.

Employees argued that time should be compensable under New York law.



# FLSA Update

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New York federal court rejected the claim.

The screenings were preliminary and postliminary activities, which are not compensable under the FLSA.

New York law on that point is consistent with FLSA.



# FLSA Update

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## Portal-to-Portal Act

- The Portal-to-Portal Act of 1947 amended the [Fair Labor Standards Act \(FLSA\)](#) to clarify that employers generally do not have to pay for employee time spent on "preliminary" or "postliminary" activities, such as commuting, washing up, or changing clothes, before or after the main workday.



# FLSA Update

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The Act defines compensable work as the "principal activity" or tasks "integral and indispensable" to the job.



# FLSA Update

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Preliminary/Postliminary activities. Generally, employers are not required to pay for:

- Traveling to and from the actual place of work (commuting).
- Activities performed before or after the workday that are not part of the principal job.
- Using an employer's vehicle for commuting, if within the normal area and based on an agreement.



# FLSA Update

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Principal activities. Time must be paid if it is "integral and indispensable" to an employee's main duties, including:

- Setting up equipment or performing safety checks.
- Tasks required by the employer before or after regular hours that directly benefit the business.
- Rest breaks of 20 minutes or less.

Meal breaks where the employee is not completely relieved of duties.



# FLSA Update

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**Exceptions:** If a specific task, such as washing up, is necessary due to handling toxic materials for safety, it may be deemed "integral and indispensable" and therefore compensable, even if it is a preliminary/postliminary activity.



# FLSA Update

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## Common Allegations in Portal-to-Portal Lawsuits

- **Security Screenings:** Employees often allege that time spent in security lines, particularly to prevent theft at the end of shifts, is compensable time. (This generally fails under FLSA, but can prevail under State laws.)
- **Donning/Doffing Protective Gear:** Claims frequently involve time spent putting on (donning) and taking off (doffing) required uniforms or safety equipment.
- **Mandatory Transportation & Travel Time:** Lawsuits may argue that traveling to job sites, or waiting for employer-mandated transportation, is work-related travel.
- **Computer Shutdown/Startup:** Time spent booting up or logging off computers before or after the official clock-in/out times is frequently litigated.
- **Material Handling:** Time spent picking up or returning tools and equipment at a labor site.





# FLSA Update

State law matters.

March 24, 2026 decision by Illinois  
Supreme Court.

Illinois Minimum Wage Law (IMWL)  
does not mirror FLSA.

# FLSA Update

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Federal court asked Illinois Supreme Court to clarify.

IMWL did not categorically exclude preliminary/postliminary activities.

Illinois DOL regulations define “hours worked” more broadly than federal law.



# FLSA Update

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Illinois regulations include as hours worked “all the time an employee is required to be on duty, or on the employer’s premises, or at other prescribed places of work, and any additional time the employee is required or permitted to work for the employer.”

That is broader than the Portal-to-Portal act term “principal activities”.



# FLSA Update

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Common collective action allegations.

**Misclassification of Exempt Status**: Incorrectly classifying employees as exempt (e.g., administrative, executive, professional) to avoid paying overtime.

- **Off-the-Clock Work**: Requiring or allowing employees to work before/after shifts, during breaks, or at home without recording the time.
- **Improper Overtime Calculation**: Failing to include bonuses, commissions, or shift differentials in the "regular rate" of pay when calculating time-and-a-half.
- **Meal and Rest Break Violations**: Automatically deducting pay for breaks that employees actually work through or are not fully relieved from duty.
- **Independent Contractor Misclassification**: Improperly treating workers as independent contractors to avoid minimum wage and overtime obligations.
- **Tip Pooling and Minimum Wage**: Improper mandatory tip pools or failing to pay the minimum wage for all hours worked.



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