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## **New DOL Opinion Letter on Intermittent Leave Under FMLA**

The US Department of Labor (DOL) has issued a new [Opinion Letter](#) addressing intermittent leave under the Family and Medical Leave Act (FMLA). Opinion Letters are issued by the DOL in response to a request for guidance on a specific matter raised by the individual or organization seeking the opinion.

The recent FMLA Opinion Letter relates to a request for an opinion on whether an employee may take intermittent leave under the FMLA to attend a Committee on Special Education (CSE) meeting to discuss the Individualized Education Program (IEP) of the employee's son or daughter. The children have qualifying serious health conditions under the FMLA. The employer previously granted the employee's request for intermittent leave in order to take the children to medical appointments but denied the request for leave to attend the CSE/IEP meeting.

Based on the facts presented, the DOL concluded that the need to attend CSE/IEP meetings addressing the educational and special medical needs of the children who have serious health conditions as certified by a health care provider is a qualifying reason for taking intermittent FMLA leave.

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## **NLRB Rules Wrongly Classifying Employees as Independent Contractors Does Not Violate NLRA**

The National Labor Relations Board (NLRB) has decided that employers that mistakenly treat employees as independent contractors do not violate the National



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Labor Relations Act (NLRA) solely because of that error. The Board held that in an employer's communication to its workers that they are independent contractors does not, on its own, violate the NLRA if that decision turns out to be wrong.

In the Board's opinion, such communication does not inherently threaten the employees with termination or other adverse action if they engage in activities protected by the NLRA.

In this case, the Board found the workers to be employees, not independent contractors, and thus protected by the Act. Based on that determination, it held that the employer did violate the Act when it discharged one of these employees for bringing group complaints about the way the employer was treating them to management's attention.

The Board majority held, however, that the employer wrongly classifying its employees as independent contractors was not a separate violation.

[Velox Express, Inc., 15-CA-184006, 368 NLRB No. 61.](#)

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## National Safety Council Produces Opioid Toolkit for Employers

A new employer [toolkit](#) from the National Safety Council aims to help employers create workplace safety programs focused on opioids.

The toolkit includes sample policies, fact sheets, presentations, safety talks, posters, white papers, reports, and videos.

The materials convey information on how opioids impact the workplace and how to recognize signs of impairment, educate employees on the risks of opioid use, develop drug-related policies and support employees who are struggling with opioid misuse.

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## EEOC Adds Guidance on Reporting Non-Binary Employees on EEO-1

The Equal Employment Opportunity Commission (EEOC) recently published guidance in the form of [Frequently Asked Questions](#) (FAQ) advising employers on how to report non-binary employees on Form EEO-1.

EEOC explained in the FAQ that filers may report employee counts and labor hours for non-binary gender employees by job category and pay band and racial group in the comment box on the Certification

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Page, prefacing the data with the phrase “Additional Employee Data:”. There is no apparent requirement for employers to collect information on whether an employee identifies as non-binary, only instructions on how to report for those who do collect the data.

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