

Employment Law Q&A: Salary deductions for exempt employees



Ryan Neumeyer | Monday, May 15, 2017

The Fair Labor Standards Act (FLSA) provides an exemption from its overtime pay requirement for certain categories of employees. That exemption is based on satisfying two criteria/tests: the duties test and the salary test.

Most employers are aware that to satisfy the salary test, on a weekly basis an exempt employee must receive a “predetermined amount constituting all or part of compensation, which amount is not subject to reduction because of variations in quality or quantity of work performed.” This generally means that to be considered “exempt” under the FLSA, an employee must receive the full salary for any week in which the employee performs work without regard to the number of days or hours worked.

However, because little is straightforward with the FLSA, there are certain circumstances when payment of the full salary is not required. Those situations when deductions are permissible are detailed below.

Q. When is it permissible to deduct from an exempt employee’s salary under the FLSA?

A: The stakes are high in this area because improper deductions could result in all salaried, exempt employees in a given job classification losing their exempt status and becoming entitled to additional overtime pay.

Generally, deductions to exempt employees’ salaries are permissible under the following circumstances:

1. First and last weeks (proportionate pay is allowed).

Employment Law Q&A: Salary deductions for exempt employees

2. For any work week in which no work is performed.
3. Absence from work for one or more full days for personal reasons, other than sickness or disability.
4. Absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability.
5. For penalties imposed in good faith for infractions of safety rules of major significance.
6. For unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules.
7. For absences taken under the Family and Medical Leave Act (FMLA).

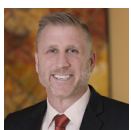
The following deductions have been found to be impermissible:

1. For absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.
2. Absences occasioned by jury duty, attendance as a witness or temporary military leave. However, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.
3. **For any absence for any part of a day – if the exempt employee comes to work for an hour, they must be paid in full for that day (unless the time is attributable to FMLA). Note, however, that an employer may require the use of available leave/accrued time for partial day absences and reduce the employee’s available leave bank by the partial day amount, but may not make a deduction from the employee's salary for partial day absence.**

The Department of Labor (DOL) has provided employers with a safe harbor if they inadvertently make deductions. Employers with such a policy will not lose the exemption if they take the following steps after receiving an employee complaint:

1. Reimburse employees for any improper deductions.
2. Make a good faith commitment to comply in the future.
3. Commit not to willfully violate the policy in the future by continuing the improper deductions after receiving employee complaints.

Should you have any questions regarding what policies you need to have in relation to wage and hour in your employee handbook, or when it is appropriate to deduct from an exempt employee’s wages, please feel free to contact the McDonald Hopkins attorney listed below.



Ryan Neumeyer

