Deductions From Pay (exempt employees)

Overview

In addition to meeting certain duties tests, to qualify for exemption under the Regulations, Part 541, generally an employee must be paid at a rate of not less than $455 per week on a salary basis. As a general rule, if the exempt employee performs any work during the workweek, he or she must be paid the full salary amount. An employer may not make deductions from an exempt employee's pay for absences caused by the employer or by the operating requirements of the business. If the exempt employee is ready, willing, and able to work, an employer cannot make deductions from the exempt employee's pay when no work is available.

To qualify for exemption, employees generally must meet certain tests regarding their job duties and meet certain compensation requirements. Job titles do not determine exempt status. You should also review the other sections of this Advisor for help in determining whether the employee meets the duties tests for exemption.

Are any deductions allowed?

What kinds of deductions are not allowed?

What is the effect of isolated or inadvertent improper deductions?

What if the improper deductions are not isolated or inadvertent?

How do you distinguish between isolated or inadvertent improper deductions and an actual practice of making improper deductions?

What if the employer does not reimburse the employee for the deductions?

Are any deductions allowed?

Deductions from pay are allowed:

- When an employee is absent from work for one or more full days for personal reasons other than sickness or disability;
- For absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;

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- To offset amounts employees receive as jury or witness fees, or for temporary military duty pay;
- For penalties imposed in good faith for infractions of safety rules of major significance;
- For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
- In the employee's initial or terminal week of employment if the employee does not work the full week, or
- For unpaid leave taken by the employee under the federal Family and Medical Leave Act.

In addition, deductions may be made from the pay of an exempt employee of a public agency for absences due to a budget-required furlough, and special rules apply when such employees take partial-day (or hourly) absences not covered by accrued leave.

Each of these allowable deductions is described elsewhere in the Compensation Requirements section.

What kinds of deductions are not allowed?

Deductions for partial day absences generally violate the salary basis rule, except those occurring in the first or final week of an exempt employee's employment or for unpaid leave under the Family and Medical Leave Act. If an exempt employee is absent for one and one-half days for personal reasons, the employer may only deduct for the one full-day absence. The exempt employee must receive a full day's pay for the partial day worked. Other examples of improper deductions include:

- A deduction of a day's pay because the employer was closed due to inclement weather;
- A deduction of three days pay because the exempt employee was absent for jury duty;
- A deduction for a two-day absence due to a minor illness when the employer does not have a bona fide sick leave plan, policy or practice of providing wage replacement benefits; and
- A deduction for a partial day absence to attend a parent-teacher conference.
What is the effect of isolated or inadvertent improper deductions?

Improper deductions that are either isolated or inadvertent will not violate the salary basis rule for any employees whose pay had been subject to the improper deductions, provided that the employer reimburses the employees for the improper deductions.

What if the improper deductions are not isolated or inadvertent?

If an employer has an actual practice of making improper deductions from employees' pay (as opposed to isolated or inadvertent improper deductions), the salary basis rule will not be met during the time period in which the improper deductions were made for employees in the same job classification working for the same manager(s) responsible for the actual improper deductions. Therefore, the affected employees will not have been paid on a salary basis as required for exemption during that time period.

How do you distinguish between isolated or inadvertent improper deductions and an actual practice of making improper deductions?

An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis. The factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to:

- The number of improper deductions, particularly as compared to the number of employee infractions warranting discipline;
- The time period during which the employer made improper deductions;
- The number and geographic location of employees whose salary was improperly reduced;
- The number and geographic location of managers responsible for taking the improper deductions; and
- Whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

If an employer has a clearly communicated policy that prohibits the improper pay deductions that includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the salary basis of pay will not be violated unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.
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What if the employer does not reimburse the employee for the deductions?

If the facts show that the employer has an actual practice of making improper deductions and the employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the salary basis rule is not met and the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same manager(s) responsible for the actual improper deductions.

Compensation Requirements

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Practice Pointer

Do not try to do indirectly that which the law prohibits you from doing directly. Do not make an employee pay you back out of his pocket when you cannot reduce the salary through a payroll deduction. The Wage Hour Division's policy on such activity is as follows:

Accordingly, any employer policy that requires deductions from the salaries of its exempt employees to pay for the cost of lost or damaged tools or equipment issued to them would violate the salary basis requirement, thereby necessitating an evaluation under 29 C.F.R. § 541.603 to determine the effect of the improper deduction. It would not matter whether an employer implements such a policy by making periodic deductions from employee salaries, or by requiring employees to make out-of-pocket reimbursements from compensation already received. Either approach would result in employees not receiving their predetermined salaries when due on a "guaranteed" basis or "free and clear" and would produce impermissible reductions in compensation because of the quality of the work performed under the terms of the employer’s policies, contrary to 29 C.F.R. § 541.602(a).


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