

Advice Regarding Exempt Employees Salaries And Discipline

Periodically the Department of Labor (DOL) issues Opinion Letters which can be official rulings or interpretations regarding the Fair Labor Standards Act (FLSA). Recently the DOL issued two interesting letters regarding deducting damages from exempt employees' salaries and requiring exempt employees to work a certain schedule or make up hours. The full text of the rulings is available at www.dol.gov/esa/whd/opinion/opinion.htm.

1. Can you dock exempt employees' salaries or require them to reimburse the company for damage or loss of company equipment, such as cell phones or computers?

You'll remember that to qualify as exempt (not required to be paid overtime) under the FLSA, an employee must generally be paid on a salary or fee basis. To be considered paid on a "salary basis" an employee must be paid a "predetermined amount...not subject to reduction because of variations in the quantity or quality of the work performed." Additionally, except in limited circumstances, "an exempt employee must receive the full salary for any week in which the employee performs any work." Repayment to the company for damaging property or equipment is not one of those exceptions.

The DOL's Opinion Letter states that deductions from exempt employees' salaries for loss, damage, or destruction of an employer's funds or property, even when there is a signed agreement addressing this issue, would violate the exemption. The deduction is not allowed because salaries would not be guaranteed as required. The DOL noted that an out-of-pocket reimbursement would be treated similarly.

What about docking nonexempt employees or requiring them to reimburse the company for damages or losses?

The DOL, in its Opinion, notes that nonexempt employees may be treated differently. However, it does make clear that an employer cannot require a nonexempt employee to pay for damages or a loss if doing so affects that amount of minimum wage or overtime due. Note, however, that most states have implemented strict requirements regarding these issues. Employers should check state law before implementing a docking or reimbursement policy regarding nonexempt employees.

From DOL Opinion Letter: FLSA 2006-7

2. Can you require exempt employees to work 45 or 50 hours each week?

Yes, according to the DOL Letter. The number of hours worked by an exempt employee is a matter determined by the employer and employee. Employers may also require an exempt employee to record and track hours and to work a specified schedule without affecting the employee's exempt status.

Can you require that exempt employees make up work time lost due to personal absences of less than a day?

Yes.

Note, however, that under either of the above two scenarios you could not dock an exempt employee's pay for failing to meet these requirements. Additionally, failing to meet these requirements does not constitute a violation of the "workplace conduct rule" for which a disciplinary suspension of one or more days may be imposed. Those rules relate to workplace conduct, not performance or attendance issues.

From: DOL Opinion Letter FLSA 2006-6

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