

Dear HR Knowledge, Can employers dock pay for exempt employees?

The differences between exempt and nonexempt employees can cause some confusion for both workers and employers. All employees fall into one of two categories: "exempt" or "nonexempt," under the federal Fair Labor Standards Act (FLSA). A nonexempt employee must be paid overtime or time and a half, for any hours worked over 40 in a workweek.

Exempt employees are "exempt" from the protections of the FLSA and are therefore not entitled to overtime pay. In general, an exempt employee meets the following three tests:

1. Is paid at least \$23,600 per year (or \$455 per week)
2. Is paid on a salary basis
3. Performs exempt job duties (at least 50% of the time or more)

The idea behind being exempt is that employees are paid for the job they do and not the hours they work, and are therefore not eligible for overtime.

Employers often ask us if they can dock the pay of an exempt employee. This is only permissible in certain circumstances, including:

1. When the employee is absent for one or more *full days* for personal reasons other than sickness or an accident. These deductions must be made only in full-day increments – not for partial-day absences. For example, an exempt employee who needs to leave early for a doctor's appointment cannot have their pay docked for missing a few hours of work. Also, an exempt employee who often shows up late must be paid for the entire day.
2. When the employee is absent for one or more full days for sickness or a disability if the company has a plan that compensates the employee for lost salary.
3. To offset the amount the employee receives from jury service, witness pay, or military pay; however, beyond those offsets, deductions may not be made for absences caused by employee jury duty, attendance as a witness, or temporary military leave.
4. For unpaid disciplinary suspensions of one or more full days for breaking workplace conduct rules.
5. To impose a penalty when an employee violates a safety rule of major significance.
6. In some cases, when a salaried/exempt employee has worked a reduced or intermittent work schedule under the Family and Medical Leave Act (FMLA). (You can convert a salaried employee to an hourly rate during the time he or she is on intermittent or reduced-workweek FMLA leave without destroying the person's exempt status.)
7. For partial weeks worked during the initial or final weeks of employment. For example, if an employee resigns in the middle of a workweek, the employer can pay them only for the days actually worked in that week.
8. For a workweek in which no work was performed.



Employers can always discipline exempt employees for being late or force them to use their paid time off to cover hours missed, but they cannot dock the employee's pay. A common situation we hear about is when an exempt employee requests time off for personal reasons but does not have any paid time off available. As the employer, you have a few options: do nothing and pay the employee's full salary; deduct the full days missed from their salary; or allow the employee to borrow against future paid time off accruals. You must be fair and consistent in these types of situations and ensure that you are not docking an exempt employees' pay for partial-day or full-day absences that do not fall under the limited exceptions listed earlier. In all circumstances, you need to have a policy or practice in place that spells out the conditions under which you will not pay exempt employees. Make sure employees are aware of this policy prior to having their pay docked.

Keep in mind that exempt employees are hired to do the job, not to work specific hours. Taking improper deductions might jeopardize your employee's exempt status, making the employee entitled to overtime. An employer who fails to pay overtime can end up paying costly damages if a suit is filed against the organization.

Need more guidance on the FLSA? Not sure if an employee is classified properly? Please contact us to learn more about our HR services.

About HR Knowledge

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