

DEAR HRK

The rules regarding when it is permissible to dock an exempt employee's salary are confusing. Can you break them down for us?

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This is such an important topic, and we agree that the rules and regulations around pay docking are confusing. Pay docking rules apply to exempt employees as defined by the federal Fair Labor Standards Act (FLSA) as well as state law. Under the FLSA, exempt employees are not eligible for overtime, and they must be paid a set salary of at least \$684 per week, regardless of how many hours they work that week. The position must also meet certain criteria under the duties test. In addition to the FLSA, there are many states that have their own salary and duties test for determining whether an employee is exempt from overtime. In many cases, the state criteria are harder to meet than the federal criteria.

When an employee is in an exempt position as defined by the FLSA, and they perform any work during the workweek, they must receive their full salary of at least \$684 per week, unless one of the following limited exceptions applies:

- If the employee is out for one or more days due to personal reasons, other than sickness. For example, if an employee has a wedding to attend and they ran out of paid time off, you may dock a full day since this is a voluntary day off for personal reasons.
- If the employee is absent for one or more full days due to sickness or disability, but only if the reduction in pay is made in accordance with a bona fide plan, policy, or practice of providing compensation for the lost salary. For example, if an employee runs out of sick time but needs to take a sick day, an employer may dock a full day since there is a bona fide sick

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leave plan, and sick time has been exhausted. Partial day docking would violate the FLSA in this example.

- To offset amounts an employee receives as jury or witness fees, or for military pay.
- If the employee is on an unpaid leave of absence under the federal Family and Medical Leave Act (FMLA); this includes consecutive, intermittent, or reduced schedule leave.
- During the employee's first or last week of employment. For example, if an employee starts on a Wednesday, you do not have to pay them for Monday or Tuesday.

We often are asked about partial day docking, and this is generally not permissible. For example, if an employee needs to run an errand or go to an appointment during their workday, regardless of whether they have available accrual paid time off, an employer must pay their full salary or risk losing the exemption. Reducing pay is only permissible for full-day absences - for personal reasons after the employee's paid time off balances have been exhausted.

The FLSA has a carve-out for certain positions where the salary basis test does not apply; docking may be permissible depending on the specifics of the situation. Professions that are exempt from the salary test include teachers, employees that practice law or medicine, outside sales employees, and certain computer professionals. The FLSA has clear definitions of these roles, so employers must understand that job title alone is not the best way to determine the intricacies of whether the salary requirements should be followed.

When this is the case, an employee in that specific FLSA exception category may be paid any amount on any basis, and as such, their salary may be subject to deductions or docking if the employee worked less than a full day.

Teachers fall into this category if their primary duty is teaching, tutoring, instructing, or lecturing and if they are employed and engaged in this activity in an educational establishment. Some examples include, but are not limited to, regular academic teachers; kindergarten or nursery schoolteachers; teachers of gifted or disabled children; and vocal or instrument music teachers. The salary and salary basis requirements do not apply to bona fide teachers as defined in the regulations; paraprofessionals, for example, may not qualify, so analysis is situation specific.

With regards to state regulations, Massachusetts, for example, follows federal FLSA rules, therefore Massachusetts schools may dock a teacher's salary in full or partial day increments for any reason. It is important to review the laws in other states since this guidance may not be applied across the board. It is also generally best practice to apply consistent HR and payroll practices within your organization.

Even though Massachusetts follows the FLSA, it is important to review the interplay of earned sick time. Employers that provide 40 or more hours of paid time off that may be used for sickness reasons are not required to provide additional sick leave to employees who use their paid time off for other

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purposes and have need of sick leave later in the year. Employers must provide notice to employees that additional time will not be provided. This provision should be outlined in your organization's policy.

In summary, this is a complicated topic and the FLSA carves out several exceptions depending on the category of employee. We cannot emphasize enough that job title alone is not adequate to determine exempt status and whether the salary basis exemptions apply. Most of what we have outlined applies to federal law, therefore interpretation and application of wage and hour laws under state law may be different.

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