

Exempt Employees When Can you deduct pay?

Exempt employees are typically paid on a “salary basis”, which means an employee regularly receives a predetermined amount of compensation each pay period. With few exceptions, an exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked.

When you cannot deduct pay:

- The employer may not reduce an employee’s salary paid in a given pay period due to variations in quality or quantity of work performed.
- The employer may not reduce an employee’s salary when the employer has no work available, but the employee is ready, willing and able to work.

When you may make limited reductions

- An employer does not have to pay an employee for any workweek in which the employee performs **no work at all**.
- If the employer has a bona fide leave plan that has a specific amount of paid days off, the employer may reduce the employee’s salary for a full day absence that occur after the employee has exhausted all their sick time or disability leave
- If the employee has used up all their vacation time and wants to take a day off, it is possible for them to take the day off without pay. You will not need to pay them for that day if the time off is for a non-illness related day. It must be equivalent of a vacation day, not a “sick day”. If the employee works any time during their day off, you will need to pay for the entire day.
- Full day deductions are allowed when leave is taken under the FMLA. For partial days under the FMLA, an employer may pay a proportionate part of the full salary of time worked. For example, if an exempt employee who normally works 40 hours per week uses 4 hours of unpaid leave under the FMLA, an employer may deduct 10 percent of the exempt employee’s normal salary for that week ($4/40 = .10 \times 100 = 10\%$)
- Reductions from an exempt employee’s salary may also be taken for amounts paid to the employee for jury service or witness fees received or military service pay received by the employee.
- An employer may make full-day salary deductions for “infractions of safety rules of major significance” or for disciplinary suspensions of a full day or more for violations of workplace conduct rules pursuant to a written policy (such as a policy against sexual harassment) so long as the policy is “applied uniformly to all workers.”
- In limited instances, an employer may also make partial-day salary deductions, such as for infractions of safety rules of major significance.
- Partial weeks worked during the initial or final weeks of employment. For example, if Joe resigns in the middle of a workweek, pay him only for the days worked in that week.

Why is it important not to make improper deductions from an exempt employee’s salary?

- The employer runs the risk of causing the employee to lose exemption due to improper deductions because the employee would no longer be considered paid on a salary basis. If that happens, the employer would then owe overtime pay to the employee.
- In order to prevent the loss of exemption due to inadvertent deductions, employers should clearly communicate to employees a policy prohibiting improper deductions and inviting employees to notify the employer in the event that they believe an improper deduction has been taken.

- If an employer learns that an improper deduction has been taken, the employer should promptly reimburse the affected employee for the improper deduction.
- In the event of an isolated and inadvertent improper deduction, the DOL generally will not consider the deduction to be a “violation” of the salary basis rule, so long as the employer reimburses the employee.

The Department of Labor has extensive resources regarding the Fair Labor Standards Act (“FLSA”) as well as a toll-free Help Line. You can view the resources at <https://www.dol.gov/whd/flsa/>