

Exempt Employees When Can Employers 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 employers cannot deduct pay:

- The employer may not reduce an employee’s salary paid in each 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 employers 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 paid-leave plan (such as paid sick leave, short-term disability, etc.) and the employee is not yet eligible to participate in the plan or has exhausted his or her leave, a full-day deduction from pay is allowed. **Partial-day deductions are not allowed.**
- When no work is performed in a day, full-day deductions are allowable. Personal or vacation days may fall into this category. If the employee works any time during their day off, employee should receive 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 ($4/40 = .01 \times 100 = 10\%$).
- 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.
- If there is a major safety infraction, a full or partial day may be deducted.
- For disciplinary suspensions for one or more days involving 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 exempt employees.”
- During a pandemic, employers should check the Department of Labor guidelines to determine allowable deductions for exempt employees.
- **If an employee is furloughed and works anytime during the week, then the employer is required to pay the exempt employee for the entire workweek. But, if the exempt employee is temporarily relieved of their duty and has not performed any work during the week, then the employer does not have the obligation to pay them for that workweek.**
- 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 will 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. Resources can be found at <https://www.dol.gov/whd/flsa/>