

THE FAIR LABOR STANDARDS ACT OF 1938

The Fair Labor Standards Act (FLSA) exempts bona fide executives, administrators, professionals (including any worker employed as academic administrative personnel or as a teacher) from its minimum wage and overtime requirements. The requirements for this exemption are generally referred to as "white-collar" rules.

The exemption for these "white-collar" employees varies by employee category. However, employees generally must be compensated on a salary basis, meet minimum earnings requirements, and satisfy a "primary duty" test to be classified as exempt.

Employers are expected to administer the provisions of the Fair Labor Standards Act in such a way as to avoid the risk of invalidating the exempt status of an individual employee, a class of specific employees, or all of its salaried employees.

Upon invalidation of exempt status, Department of Labor investigators may assess back wages for all of the overtime that the employee has worked over the previous two or three years.

Certain practices are viewed by the Department of Labor as inappropriate management of salaried employees. Although salaried employees are expected to provide whatever hours are necessary in order to accomplish their assigned duties, and at times not normally considered regular working hours, managers may not require salaried employees to work specific hours or account for time worked on an hourly basis.

The Fair Labor Standards Act divides employees into two general categories: public sector and private sector. Pay and leave are handled differently for each category under the provisions of the Act.

Public sector employers may initiate an hour-for-hour docking of pay for absences occasioned by the employee without destroying their exempt status because the Department of Labor recognizes that every public-sector employee is theoretically subject to potential docking for partial-day absences due to public accountability requirements. Hour-for-hour docking of exempt salaried employees is permitted

under the regulations (only) if the employee is paid according to a pay system established by statute, ordinance, or regulation; or a policy or practice established under principles of public accountability.

Although many of the programs at the University are funded by public dollars, the University of Louisville is considered a "private sector" employer under the provisions of the Fair Labor Standards Act. Private sector employers are expressly prohibited from docking the salary of an exempt employee in increments smaller than an entire day.

Payment On A Salary Basis

The executive, administrative, and professional exemption tests of the Fair Labor Standards Act generally require that the employees be paid on a salary basis. An employee is paid "on a salary basis" if the following conditions are met:

The employee is regularly paid each pay period,

The employee is paid on a weekly or less frequent basis,

The salary is a predetermined amount,

The salary constitutes all or part of the employee's compensation,

The amount of the salary does not vary when the quality or quantity of the work performed varies, and

With certain exceptions, the employee receives his or her full salary for any week in which any work is performed, without regard to the number of days or hours worked. An employer is permitted to pay exempt employees less than full week's salary during their first and last weeks on the job. For these weeks, the employer can pay employees pro rata for only the days actually worked.

PAID AND UNPAID ABSENCES OF
PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES

WORKING IN THE PRIVATE SECTOR

ABSENCES

In general, exempt employees need not be paid for any workweek in which they perform no work. However, for any week in which exempt employees perform any work, they must receive their full salary without regard to the number of days or hours worked. An employer can jeopardize an employee's exempt status by improperly docking the employee's pay for an absence from work. The DOL's rules for determining how an employer may dock an exempt employee's pay for absences from the job distinguish between "absences occasioned by the employer" and "absences occasioned by the employee".

ABSENCES OCCASIONED BY THE EMPLOYER

If an employee's absence is occasioned by the employer, its business operations, or any other circumstances beyond the employee's control, no deduction in pay may be made unless the employee misses an entire workweek. An absence of an exempt employee is occasioned by an employer if either:

the absence results from a decision by the employer, or

(Requiring an employee to provide a medical certification that he or she is able to return to work is considered a decision by the employer.)

the absence results from the requirements of the employer's business operations.

DISCIPLINARY SUSPENSIONS

Employers can suspend exempt employees for periods of less than a full workweek (only) for major safety violations. However, courts have found that very few safety violations meet this narrow exception.

If an employer suspends an exempt employee for anything less than a major violation for a period of less than a full workweek, the employer must pay the employee's full salary for that workweek or risk losing the employee's exempt status. If the employer fails to pay the employee's full salary for the workweek, DOL investigators might later invalidate the employee's exempt status and assess back wages for all of the overtime that the employee has worked over the previous two or three years. Suspension of a full week are permitted because exempt employees do not have to be compensated for weeks in which no work is performed.

JURY DUTY, WITNESS DUTY, MILITARY DUTY

Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave.

ABSENCES OCCASIONED BY THE EMPLOYEE

Substantially different rules apply to absences occasioned by exempt employees, including:

absences due to illness, and

personal absences.

In general, an employer may dock an employee for such absences for a day or more without jeopardizing the exemption. However, deduction may not be made for absences of less than one day if the employer wants to maintain the exemption.

Absences Due To Illness

An employer may make deductions from an exempt employee's salary for absences due to sickness or disability if the employer has a bona fide leave plan for sickness or disability that provides compensation for sick days. However, if an employee comes to work, does some work and then gets sick, the employer may not dock the employee's salary for that partial day's absence, even if his or her sick leave has been depleted.

NOTE: An exception under the Family and Medical Leave Act (FMLA) permits an employer to dock pay for a partial day's absence for family leave. The Family and Medical Leave Act (FMLA) allows deductions for leave or less than a full day under certain circumstances. Thus, if an exempt employee is on FMLA leave for part of a day, his or her salary can be docked. This is the only exception to the general rule prohibiting employers from docking exempt employees' pay for partial days of absence due to sickness.

Personal Absences

A personal absence is any absence that an employee takes for personal reasons. If an exempt employee is absent for an entire day for personal reasons, the employer may dock the employee's salary on a pro rata basis for the absence. If, on the other hand, the employee performs some work before taking a leave of absence for personal reasons for the remainder of the day, the employer may not dock the employee's pay. In other words, salary reductions for part-day personal absences are not permitted.

REDUCING LEAVE BALANCES

Employers generally can reduce or "dock" the leave balances of employees in increments of less than a day. In fact, the Wage-Hour Division takes the position that employers can dock exempt employees' leave balances in any increments they choose, even hours.