

Salary Basis Policy
Provides Safe Harbor from Overtime Lawsuits

The Fair Labor Standards Act (“FLSA”) requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. However, the FLSA contains certain exemptions from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional, outside sales and computer employees. These exemptions are generally known as the “white collar” exemptions. To qualify for exemption, employees generally must meet certain tests regarding their job duties **and** be paid on a salary basis at not less than \$455 per week. In order for an exemption to apply, an employee’s specific job duties and salary must meet all the requirements of the Department’s regulations. This article deals only with the salary basis portion of the test. You should contact your legal counsel to obtain additional information regarding the duties tests.

In August of 2004, the Department of Labor revised the regulations interpreting the “white collar” exemptions in an attempt to reduce confusion and assist employers in complying with the FLSA. An additional goal of the revised regulations was to reduce or eliminate many of the burdensome and unfair class action lawsuits brought against employers due to inadvertent and/or minimal violations of the salary basis rules for exempt employees. Prior to the revisions, salary deductions made due to absences of less than a full work day or because of the quality or quantity of work could result in a loss of exempt status not only for the affected employee, but also for other exempt employees. Plaintiff’s attorneys would then bring class action lawsuits attempting to recover for unpaid overtime wages for all exempt employees for a period of 2 to 3 years prior to discovery of the violation. This result was especially unfair to employers because the errors often were made by lower-level management or payroll personnel.

The Department sought to remedy this situation in the revised regulations by offering employers a safe harbor provision if the employer adopts a policy that includes a procedure to address complaints of improper deductions from salary. For the protection to apply, however, an employer must promptly remedy any improper deductions. The process is similar to the process used to discover and remedy complaints of unlawful harassment.

Employers are still prohibited from making improper deductions from an exempt employee’s salary. However, if the employer publishes a salary basis policy and promptly corrects any inadvertent, improper deductions, the employer will be entitled to some measure of protection from class action lawsuits. Accordingly, employers are well advised to adopt and publish a salary basis policy which advises employees of the prohibition against improper deductions from their salary and contains an easy to use complaint resolution procedure.

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