



Deductions from Exempt Employees' Pay - Under California Law *by Lauraine Bifulco*

Generally, both federal and state law provide that an exempt employee must be paid his/her full salary for any workweek in which he/she performs any work, regardless of the number of days or hours worked, subject to limited exceptions. California employers are cautioned to pay particular attention to this topic, as the state exceptions are narrower than the federal. The importance of this issue should not be underestimated since an employer who makes inappropriate deductions from an exempt employee's wages may cause that employee and possibly the entire category of employees to lose their exempt status and then become eligible for overtime pay. Additionally, back overtime, taxes, fines, penalties, attorneys' fees, and the risk of lawsuits can pose significant hardship for the employer.

The following summarizes the current rules to be followed in California:

Quantity or Quality of Work: An employer owes an exempt employee his/her full weekly

salary regardless of the quantity or quantity of work performed that week.

Business Closures, Unavailability of Work: If a business shuts down for less than a full week (even for a holiday), all exempt employees must receive their full salary. The same would apply if the employer does not have work available for the employee. Non-exempt employees, on the other hand, may be paid only for the time actually worked.

Safety Violations or Disciplinary Action: California employers may not make deductions from exempt employees' wages as penalties for safety violations and/or for disciplinary reasons.

Arriving Late, Leaving Early: Penalties or deductions from an exempt employee's salary for late arrivals or for leaving early are not allowed.

Jury Duty, Appearing as a Witness, Military Leave: Unless the employee is absent for an entire week, deductions may not be made from an

exempt employee's salary for these reasons.

Initial/Final Week of Work: Employers may make full-day deductions from an exempt employee's regular salary for partial weeks worked during his/her first and last week of work.

Worker's Comp Leave: An employer is allowed to make full-day deductions from an exempt employee's pay on a workers' compensation leave, provided that the employee is receiving compensation from a workers' comp policy or a self-insured plan. Additionally, to take these deductions, the employer must maintain a plan that provides for compensation for non-work-related injuries or accidents.

Sickness or Accident: Generally, no deduction may be made from an exempt employee's salary for absences caused by sickness or accident unless the absence exceeds a full week. However, if the employer has a bona fide sickness or disability plan (i.e., a plan which provides a reasonable number

of days off without loss of compensation for absences due to illness - which could be either a sick leave or a PTO plan) and the employee has exhausted his/her allowance under the plan or is not yet eligible under the plan, then the employer may make salary deductions for full days of work missed. An employer is free to deduct time from an exempt employee's leave balance in hourly increments as long as it does so in accordance with its own policies. If the employee does not have sufficient paid leave available but takes a full or partial day off due to illness, the employee's leave balance can be deducted but he/she must still be paid his/her full compensation for that day.

An employer is permitted to establish a policy that requires an employee to use available vacation time if there is insufficient sick leave to cover an absence.

Vacations or Personal Time Off: California employers may make pay deductions from exempt employees who take a full day of work off for personal reasons (including to respect a religious holiday) even if the employer does not maintain a bona fide vacation plan. If the employer does maintain a bona fide vacation or PTO plan, the employer is free to deduct time from an exempt employee's leave balance in hourly

increments as long as it does so in accordance with its own policies. If the employee does not have sufficient vacation or PTO available but takes a full day off for personal reasons (not illness), the employee's leave balance can be deducted and the employee can be paid only for the amount of time that was available in the bank. If the employee does not have sufficient vacation or PTO available and takes a partial day off for personal reasons, the employee's leave balance can be deducted, but the employee must still be paid for the full day of work.

Additionally, employers should be cautious about exempt employees performing work such as checking voicemail and email during a vacation as this can potentially turn a full day off into a partial day off. In order to maintain a full day off despite the de minimus work, employers need to communicate clearly to employees that they are not expected or required to perform work during absences.

Family/Medical Leave: An exempt employee who takes time off from work on an intermittent basis under FMLA or CFRA may have his/her salary, vacation, PTO, or sick balance reduced in hourly increments without risking his/her exemption.

Pregnancy Leave: California Pregnancy Disability Leave laws do not make it clear whether or not an exempt employee taking intermittent leave under PDL may have partial-day salary deductions. As such, we recommend that unless the leave is also covered by FMLA, deductions only be taken in full-day increments.

Supplemental Payments?

Under California law, an employer is permitted to pay exempt employees above and beyond their regular weekly salary (bonuses, additional pay for "overtime" hours worked, etc.) without risking their exempt status.

Do you need help? If your company does not have written policies or job descriptions, you should seriously consider implementing them. If you already have these documents, make sure to review them for compliance on an annual basis. If you need more information about employee handbooks, which employees should and should not be exempt, specific deductions on one of your employees, wage orders, overtime regulations, sick leave plans, vacation/PTO benefits, or any other subject discussed in this article, please contact your labor attorney, HR consultant, or the federal and state agency websites.

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