



Employment Law Bulletin

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Exempt Employee Salaries and Use of Time Off – When Are Deductions Permitted?

We've all heard the adage that exempt employees* are entitled to receive their full salary if they perform any work during the workweek, but what does that really mean? Improper deductions from exempt employee salaries can lead to expensive wage and hour claims. If unlawful deductions from salary were made and the employee no longer works for the organization, add up to 30 days of waiting time penalties into the liability mix. Here are the rules for deducting exempt employee salaries and time off banks for partial workweek and partial workday absences.

*Exempt employees are those employees who are not eligible for overtime because they are paid a fixed salary equal to at least two times minimum wage times 2080 hrs. (\$45,760 for 2018) and meet the requirements of an exemption from the Industrial Welfare Commission Order applicable to the employer.

Beginning or Ending Employment in the Middle of a Workweek

Let's start with the easiest. If an employee is hired or terminated in the middle of the workweek, the employer is only required to pay the exempt employee for the days actually worked. If the employer's workweek is Sunday to Saturday and the employee starts work on a Wednesday of what would ordinarily be a Monday through Friday work schedule, the employee is owed 3/5 of the weekly salary for the first week of work. The prorated salary must be paid in full day increments, even if the employee only worked half of Wednesday and all day on Thursday and Friday.

Taking Time Off for Personal Reasons During the Workweek

When exempt employees take time off for part of a workweek, the employer can deduct

that time away from the employee's vacation/PTO bank in increments, however the employer's policy must state what those increments are. If the employee's vacation/PTO balance is zero (or if the employer does not offer vacation/PTO at all), the employer can only deduct full workday absences from the salary; salary deductions for partial day absences are not allowed. Warning – If your exempt employees have the ability to work outside the workplace (think email, phone calls, remote computing) make sure the employee has not performed any work remotely before deducting a full day absence from the salary.

Taking Sick Leave During the Workweek

The rules applicable to time off for personal reasons also apply when an exempt employee takes paid sick leave with one exception: if the employer's sick leave policy provides that employees will be paid their sick leave balance if they don't use their sick leave (e.g. a "well pay" feature), then the sick leave bank can only be deducted if the time away is four or more hours.

Partial Workweek Business Closures

If the employer closes the business for a partial workweek making work unavailable to the exempt employee, the employee must be paid the full weeks' salary unless the closure was due to an Act of God or reasons beyond the employer's control (for example, utility failures, fire). However, if the business is closed for an entire workweek and the employee does not perform any work during the workweek, no salary is owed for that workweek. But, heed the warning above if the employee has the ability to work remotely without your knowing it.

Another interesting tidbit, employers cannot require exempt employees to use their vacation/PTO when the employer closes the business for a partial workweek.

Partial Workweek Disciplinary Suspensions

If disciplining an exempt employee involves a suspension, make it a full workweek and prohibit the employee from working remotely. If the employee works a partial workweek she/he will be entitled to the full workweek's salary – meaning the employee got some free paid time off as her/his discipline!

Conclusion

Exempt employee salary rules can be complicated, but strict compliance is critical to avoid exposure to wage and hour claims. The key to compliance is having well trained payroll and human resources staff to ensure they manage employee time off banks and salary payments properly. Contact one of SMT's employment law attorneys if you have questions about compliance or would like to schedule a training.

Immigration Authorities – Are You Prepared if They Appear at Your Place of Business?

As we reported in our December 2017 Employment Law Bulletin, new regulations took effect in January imposing specific obligations on California employers when immigration authorities show up at the workplace with an arrest warrant, search warrant or request to

inspect the employer's I-9 forms demonstrating employees' authorization to work in the United States.

Among the new employer obligations is the requirement to post a detailed notice to employees within 72 hours of the receipt of a Notice of Inspection from an immigration agency. The Labor Commissioner has recently published a template for the Notice to assist with the very short timeframe for posting, which can be found here: https://www.dir.ca.gov/DLSE/LC_90.2_EE_Notice.pdf. There are additional obligations once the results of the inspection are disclosed to the employer, which if not followed can result in stiff penalties. See our December 2017 Employment Law Bulletin for more details.

Several of our clients have contacted us for assistance in preparing response plans, procedures and training for employees on how to respond when immigration agencies show up at the workplace. If you're interested in having a plan drafted for your workplace or need help weeding through the new notice requirements, please contact an SMT attorney. We'll be glad to help.

No Se Habla Español?

SMT's employment attorneys can provide your company with employment policies, forms and employee disciplinary documentation in Spanish. Providing such important information to employees in the language they understand is critical to employee performance, providing a welcoming diverse work environment, and protecting your company against employment claims. Contact an SMT attorney today to get started.

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