

Compensation Requirements

Sick Leave and Disability Leave

In addition to meeting certain duties tests, to qualify for exemption under the Regulations, Part 541, generally an employee must be paid at a rate of not less than \$455 per week on a salary basis. As a general rule, if the exempt employee performs any work during the workweek, he or she must be paid the full salary amount. The employee need not be paid for any workweek during which he or she performs no work. An employer may not make deductions from an exempt employee's pay for absences caused by the employer or by the operating requirements of the business. If the exempt employee is ready, willing and able to work, deductions from the employee's pay may not be made when no work is available. One limited exception to this general rule is deductions of full day increments for absences due to sickness or disability. In addition, special rules regarding leave apply to exempt employees of public agencies.

To qualify for exemption, employees generally must meet certain tests regarding their job duties and meet certain compensation requirements. Job titles do not determine exempt status. You should also review the other sections of this Advisor for help in determining whether the employee meets the duties tests for exemption.

Sickness

An employer may make a deduction from an exempt employee's salary for the employee's full day absences due to sickness *provided* the deduction is made in accordance with a bona fide plan, policy or practice of providing wage replacement benefits for such absences. Deductions may also be made for the exempt employee's full day absences due to sickness before the employee has qualified for the plan, policy or practice or after the employee has exhausted the leave allowance under the plan.

For example, an employer's sick leave plan provides each employee with 10 paid sick days per year. An employee must work for the employer 90 days before becoming eligible for the sick leave benefit. In this example, a deduction of one or more full days may be made from the salary of an exempt employee who is absent due to sickness:

- Before the employee becomes eligible to participate in the sick leave plan (i.e., in the initial 90 days of employment);
- After the employee has exhausted the 10-day leave entitlement under the sick leave plan; and
- When the employee receives compensation according to the employer's sick leave plan. (In this case, the employee would most likely not see a reduction in pay but rather the employee's

sick leave benefit would be reduced by the number of days he or she was absent due to sickness and for which compensation from the plan was received).

Disability

An employer may make a deduction from an exempt employee's salary for the employee's full day absences due to disability (including work-related accidents) *provided* the deduction is made in accordance with a bona fide plan, policy or practice of providing wage replacement benefits for such absences. Deductions may also be made for the exempt employee's full day absences due to disability before the employee has qualified for the plan, policy or practice or after the employee has exhausted the leave allowance under the plan. The employer is not required to pay any portion of the exempt employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice.

For example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions:

- for the three days of absence before the employee qualifies for benefits under the plan;
- for the twelve weeks in which the employee receives salary replacement benefits under the plan; and
- for absences after the employee has exhausted the 12 weeks of salary replacement benefits.

Similarly, an employer may make deductions from an exempt employee's pay for absences of one or more full days if wage replacement benefits are provided under a state disability insurance law or under a state workers' compensation law.

Special Rules Applicable to Public Agency Employees

An exempt employee of a public agency may have his or her pay reduced or may be placed on unpaid leave for absences due to illness or injury of less than one full day when leave is not used by the employee because:

- permission to use leave has not been sought or permission has been sought and denied;
- the employee's accrued leave has been exhausted; or
- the employee chooses to use leave without pay;

provided that the employee is paid according to a pay system established by statute, ordinance or regulation or by a policy or practice established pursuant to the principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced for such absences.

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