

Can You Dock An Exempt, Salaried Employee's Compensation?

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The Fair Labor Standards Act (“FLSA”) permits employers to dock the pay of exempt employees under certain circumstances. Exempt employees are those employees who meet the test to be exempt from [overtime pay](#) and can be paid a salary.

Exempt employees are paid the same amount each paycheck, regardless of how many hours they work. Therefore, employers must be aware that docking the pay of exempt employees risks not only violating the law, but also altering an employee’s exempt status—in other words, shifting them to non-exempt status. As a result, hours worked would have to be tracked, and overtime would need to be paid for any hours over forty (40) per week.

Docking the Pay of Exempt, Salaried Employees for Absences

Exempt employees cannot be docked because of the quality of their work. If an employer does not have work, but the employee is able to work, exempt employees must be paid as if they were on the job. Moreover, employers cannot dock exempt, salaried employees if they work any time during a week.

However, there are exceptions. Employers can pay employees for working partial weeks during the first and final weeks of their employment. Employers can also dock exempt employees for full-day absences in the following instances:

- If the employee is absent for one or more full days for personal reasons that are not due to sickness or disability
- If the employee is absent for one or more full days for sickness or disability, has a PTO plan that covers absences for sickness or disability, and the employee has exhausted their PTO or is not yet eligible for the PTO
- If the Employee does not perform any work during the week
- For intermittent unpaid family leave under the Family and Medical Leave Act

Exempt employees need not be paid for any workweek in which they do not perform work, even if they are on jury duty or military leave. If an exempt employee is absent from work for less than an entire workweek—meaning they work part of a week—because of jury duty, serving as a witness, or military leave, the employer must still pay the employee their full salary for that week. As stated in 29 C.F.R. 541.602. Part b (3). “While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees, or military pay for a particular week against the salary due for that particular week without loss of the exemption.”

In addition, the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) requires employers to abide by the same policies they have established for paid leave, other than for sickness or disability, for military personnel who take leave resulting from their service. Thus, employers must provide paid military leave to their employees that is comparable to the paid leave they provide to their employees for non-military leave.

Are You Docking Exempt Employees Correctly?

Employers should review their policies to ensure that if they are docking exempt employees that they are doing so in accordance with the law. If you are an employer who needs to determine whether you can dock a salaried employee or has any other employment law questions, please contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law Team](#).

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