



pennsylvania

OFFICE OF ADMINISTRATION

HUMAN RESOURCES AND MANAGEMENT

MEMO

TO: ALL HUMAN RESOURCE DIRECTORS OF ALL DEPARTMENTS, INDEPENDENT ADMINISTRATIVE BOARDS AND COMMISSIONS AND OTHER STATE AGENCIES UNDER THE GOVERNOR'S JURISDICTION

FROM: James A. Honchar, SPHR
Deputy Secretary Human Resources and Management

DATE: March 30, 2010

RE: FLSA Regulations – Suspensions Without Pay for Exempt Employees

In a memorandum dated August 26, 2004, you were informed of new regulations adopted by the U.S. Department of Labor that govern the enforcement of the FLSA. Prior to the regulation changes, employers could only suspend exempt employees without pay for periods less than a full workweek for violations of major safety rules. The new regulations allow exempt employees to be suspended without pay for one full day or more for violations of workplace conduct rules. The phrase "workplace conduct" refers to written rules prohibiting **serious** workplace misconduct, which includes, but is not necessarily limited to, the Commonwealth's policies against workplace violence, sexual harassment, substance abuse, and violations of state or federal law. Although this is not an all-inclusive list of those workplace conduct rules for which a suspension without pay of less than a full workweek may be imposed, please keep in mind that the phrase "workplace conduct" is to be narrowly construed so not to compromise the exempt status of exempt employees. If you are uncertain whether a workplace conduct rule is covered under the new FLSA regulations, please contact the Office of Administration, Salary and Time Administration Division.

As stated, suspensions without pay for violations of major safety rules continue to be permitted under the federal regulations, and may be deducted by the hour, or fraction thereof. Also, the new FLSA regulations did not change anything with regard to suspensions of exempt, salaried employees for attendance-related issues or job performance issues. Thus, suspensions without pay of exempt employees for reasons other than those covered by the new FLSA regulations must continue to be in increments of full workweeks. Note, however, that neither the FLSA nor anything contained herein should be construed to require that an exempt employee be suspended without pay for any specific period of time.

The 2004 regulation changes also allow employers to institute a "safe harbor" policy, wherein improper deductions can be rectified without losing the exempt status of an employee or class of employees. This new policy will be included in an amendment to the Personnel Rules and includes, in addition to the suspension deductions mentioned above, all salary deductions that are permissible under the

federal regulations, including leave without pay for personal, sick or FMLA-related reasons and deductions during the employee's first and last weeks of employment.

A requirement of the safe harbor policy is to notify exempt employees of the policy and provide exempt employees with a method of filing a complaint regarding an improper pay deduction. Attached is a posting to be placed at all worksites immediately. The posting should be placed near the federal minimum wage poster. Also attached is the complaint form that should be provided to any exempt employee who wishes to file a complaint regarding an alleged improper pay deduction. All complaints must be investigated to determine if the pay deduction is permissible under the federal regulations. If it is determined that the pay deduction was improper, the employee must receive restitution for the amount withheld. If an impermissible deduction resulted from a suspension, an alternative method of discipline may be utilized.

If you have any questions, please contact the Office of Administration, Salary and Time Administration Division at 783-8141.

Attachments

cc: Secretary Naomi Wyatt, OA
David Kessler, BCPO

EMPLOYEE RIGHTS

UNDER THE FAIR LABOR STANDARDS ACT

PERMISSIBLE SALARY DEDUCTIONS FROM THE PAY OF EXEMPT EMPLOYEES

The Commonwealth of Pennsylvania is required to comply with the federal Fair Labor Standards Act (FLSA) and the U.S. Department of Labor's regulations and rules governing the salary basis pay for exempt employees. Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to the exceptions listed below, an exempt employee must receive his or her full salary for any workweek in which the employee performs any work, regardless of the number of days or hours they work in a given workweek. Therefore, the Commonwealth of Pennsylvania prohibits any unauthorized deductions from the salary of such exempt employees. Questions concerning whether an employee is exempt should be directed to the employee's office of human resources.

Permissible Deductions

Deductions from the salary of an exempt, salaried employee are permitted as follows:

- 1. Personal Reasons.** When an exempt, salaried employee who is absent from work for personal reasons, other than sickness or disability, has no paid leave available, the employee's salary for that week will be reduced for each hour (or fraction of an hour) that the employee is absent for personal reasons.
- 2. Sickness or Disability.** When an exempt, salaried employee is absent from work as a result of his or her own sickness or disability, including absences as a result of a work-related accident or injury, the employee will be compensated in accordance with the Commonwealth of Pennsylvania's sick leave, disability or workers compensation policies, as appropriate. If the employee has no leave available and is not eligible for disability benefits, the employee's salary for that week will be reduced for each hour (or fraction of an hour) that the employee is absent due to illness.
- 3. First and Last Weeks of Employment.** During an exempt, salaried employee's first and last weeks of employment with the Commonwealth of Pennsylvania, the employee will be paid only for the days actually worked.
- 4. Unpaid FMLA Leave.** When an exempt, salaried employee takes unpaid leave under the Family and Medical Leave Act, including intermittent leave, the employee's salary will be reduced for each hour (or fraction of an hour) of unpaid leave taken.
- 5. Suspensions for Major Safety Rule Violations.** When an exempt, salaried employee is suspended for violation of safety rules of major significance, the employee's salary will be reduced for each hour (or fraction of an hour) of the length of the suspension.
- 6. Suspensions for Workplace Conduct Violations.** When an exempt, salaried employee is suspended for one or more full days for violation of one or more of the Commonwealth of Pennsylvania's workplace conduct rules, the employee's salary will be reduced for each day of the suspension. Workplace conduct rules do not include issues with an employee's job performance or attendance.

This policy addresses pay deductions from exempt, salaried employees based on the employee's absence from work. The following salary deductions are not covered by this policy: deductions required by federal, state and local laws; deductions under the Commonwealth of Pennsylvania's benefit plans; and any other voluntary deductions authorized by the employee.

Complaint Procedure

If you are an exempt, salaried employee and you believe that an improper deduction has been made from your salary, you should immediately report this information to your direct supervisor or to your office of human resources, who will provide you with a complaint form to be utilized to document the complaint. The Commonwealth of Pennsylvania is committed to investigating and resolving all complaints as promptly, but also as accurately, as possible. All complaints will be investigated and resolved within a reasonable period of time. If the investigation reveals that an improper deduction from your pay was made, the Commonwealth of Pennsylvania will reimburse you for the improper deduction and will take whatever action it deems necessary to ensure compliance with the salary basis rules. Retaliation against an employee for making a complaint under this policy is strictly prohibited.

Commonwealth of Pennsylvania

Fair Labor Standards Act

IMPROPER PAY DEDUCTIONS COMPLAINT FORM

If you are an exempt, salaried employee and you believe that an improper deduction has been made from your salary, please complete the information below and forward to your agency Human Resource Office.

Name: _____

Title: _____

Department: _____

Bureau: _____

Supervisor: _____

Week that Deduction Occurred: _____

Please explain the deduction and why you believe it was improper: _____

Signature: _____

Date: _____