PAY DOCKING AND LEAVE BANK RESTRICTIONS
FOR EXEMPT EMPLOYEES

In general, under federal and state law, employers are obligated to pay exempt employees their full salary during any week in which the exempt employee performs any services and/or in which they are “ready, willing and able” to work. Employers may not dock exempt employee’s pay based on quality or quantity of work; exempt employees must receive their full salary for any week in which they perform any work, without regard to the number of days or hours worked. Exempt employees who do not receive a full salary for any week in which they perform work lose their exempt status and are entitled to overtime pay.

If an exempt employee does not work on a given day for personal reasons (such as vacation), the employer is typically relieved of its obligation to pay the salary on that day. If an exempt employee does not work because the employer does not have work for him or her, or because the employer elects to shut down; the employer is not excused from paying the employee’s salary on any such days if the employee performed any work during the workweek. In short, employers may avoid paying exempt employees for an entire work week only during workweeks in which the employee performs no work, and may withhold salary for an individual day only if the employee does not work the day for personal reasons. The following Keynote addresses various exceptions to exempt employee pay docking. Exempt employee leave bank deductions are also addressed.

“Employer” refers to both private and public employers, except where a difference is indicated.

**Permissible deductions from exempt employee’s pay:**

1. Full day absences for personal reasons other than sickness or disability
2. Full day absences for sickness or disability if made in accordance with a bona fide salary replacement plan, policy or practice (and if sick leave is exhausted according to a bona fide sick leave plan)
3. Full day disciplinary suspension for violating safety rules of major significance
4. Full week disciplinary suspension for violating generally applicable workplace rules
5. Full and partial day absences taken under an approved Family Medical Leave pursuant to FMLA
6. Time not worked during the first and last weeks of employment
7. Full work weeks in which employee performs no work
8. Full work weeks in case of company shut down if employee performs no work (this includes weeks in which a holiday or holidays or vacation days occur and the company shuts down for the remaining days in that week)
9. Offset amounts employee receives for jury, witness or military pay
10. Public Sector only: full or partial day absences if paid according to a pay system established by statute, ordinance, or regulation and according to principles of public accountability

**Permissible deductions from bona fide leave banks:**

1. Full-day increments
2. Partial day increments (minimum one hour) only on the express or implied request of the employee for time off
3. For public employers in any increment
FURTHER EXPLANATION BY SUBJECT AREA

Sick Leave

Exempt employees who leave work early because of illness, injury or for a medical appointment may have their sick leave account docked provided the absence was for one hour or more. If an employee has not yet qualified for the employer plan or once a sick leave account is exhausted, an employer may dock pay for full-day absences, but not for partial-day absences.

Employers may not deduct from pay for a partial day’s absence for use of sick leave when the sick leave has been exhausted, except in limited circumstances under the Family Medical Leave Act. (See below) Employers cannot deduct for sickness or accident when there is no bona fide policy in effect. An employer’s written policy that “there is no policy” is not a bona fide sick leave policy.

Family and Medical Leave Act (FMLA leave)

The Family and Medical Leave Act allows eligible employees to take intermittent leave in less than one-day increments. Should an exempt employee ask for intermittent leave, the employer may deduct partial-day absences from any accrued leave account or provide unpaid leave without jeopardizing the employee’s exempt status.

Vacation Leave

Exempt employees who leave work early to start a vacation may have their vacation account docked provided the absence was for more than one hour. Allowing employees to leave work early under these circumstances is always at the employer’s discretion. Once a paid leave account is exhausted, an employer may dock pay for full-day absences, but not for partial-day absences.

Other Leave Requests

An employer may deduct in full day increments if an exempt employee takes a day off for personal reasons, other than sickness, accident or vacation, such as attending a child’s school play or event or staying home to care for a child. Partial day deductions are not permitted.

Military Duty

Exempt employees on reserve duty who are gone less than one week must be paid for the entire week in which they are absent. The employer is only obligated to pay the difference between the employees’ military pay and their regular pay, should the military pay be a lesser amount. Payment is not required for weeks in which the employee performs no work in the entire week, regardless of circumstances. Employers may not compel exempt employees to use accrued vacation for absences occasioned by military leave.

Jury Duty

Exempt employees who serve on jury duty or as a witness and who are gone less than one week must be paid for the full week in which they are absent. The employer is obligated to pay the difference between employees’ jury pay and their regular pay. Employers may not compel exempt employees to use accrued vacation or PTO for absences related to jury duty.
Plant Shutdowns and Furloughs

Employers may dock an exempt employee’s pay for any full week in which the employee performs no work. Temporary or sporadic work furloughs in which the employer requests an exempt employee to work a reduced workweek for reduced pay are not permissible. In certain circumstances, an employer may reduce the workweek and salary of an exempt employee in response to economic conditions provided the furlough is not designed to avoid the requirements of the Fair Labor Standards Act. Such furloughs should be long term and in response to economic conditions. See Keynote: Exempt Employees Furloughs and Reduced Work Weeks.

If an exempt employee does not work because the employer does not have work for him or her, or because the employer elects to shut down, the employer is not excused from paying the employee’s salary on such days if the employee performed any work during the week. Shutdowns lasting less than a full work week do not excuse employers from paying the salaries of their exempt employees on the days in question.

Employers should also recognize that they have not truly shut down their operations and relieved employees of duty (and relieved themselves of their duty to pay exempt employees) if they require or expect employees to work from home during the supposed “shutdown.” If employees retrieve or send email or voicemail during supposed “shutdown” days, they are working and may be entitled to be paid in the amount of their full salary for the day or perhaps the week. If an employer intends to implement a shutdown and avoid incurring liability for wages, it must not “look the other way” and permit exempt employees to work during shutdown days.

Mandatory Vacation During Shutdowns – Federal and Washington Law

Pursuant to Federal Law, exempt employees may be required to use accrued vacation time for any absence (full or partial day) including one resulting from a plant shutdown, without affecting their exempt status, so long as the employee received for that week, a payment in the amount equal to their guaranteed salary.

However, Washington State Law does not allow employers to require exempt employees to use vacation or leave banks for partial day absences or full day absences without the express or implied consent of the employee. (Drinkwitz v. Alliant Techsystems, Inc.) Employers in Washington must apply Washington law since it is arguably more beneficial than Federal law.

Inclement Weather

When an employer closes the office due to bad weather, the employer must pay exempt employees for the time missed, unless the office is shut down for a full workweek. The employer may require the exempt employee to use vacation or PTO time to cover the lost time for a full work week. If the exempt employee has already exhausted all paid leave accounts, however, the employer must pay the full salary for the time missed unless the absence is for a full work week. Exception - If the offices remain open during bad weather and an exempt employee does not report to work the employer can dock the exempt employee a full day’s pay for a full day missed because it is considered an absence for a personal reason.

Safety Violations

An employer may impose full-day pay deductions as discipline in response to an employee’s major safety violation that poses serious danger to the facility, the public or other employees. This includes only those relating to the prevention of serious danger to the plant, the public, or other employees, such as rules prohibiting smoking in explosive plants or around hazardous or other flammable materials.
Loss or Damage of Equipment

Exempt employees may not be subject to pay deductions for the negligent loss, damage, or destruction of employer’s funds or property regardless of whether or not the employee signed an agreement allowing for such deductions. Such impermissible deductions violate the Fair Labor Standards Act’s (FLSA) prohibition against reductions in compensation due to the quality of the work performed by an exempt employee.

First and Final Weeks of Employment

An employer may prorate an exempt employee’s salary for the actual days worked in the first and final weeks of employment.

Window of Correction

An employer may correct an improper deduction without causing loss of exempt status if the improper deduction is infrequent and inadvertent and the employer immediately begins taking corrective steps to promptly resolve the improper deduction when brought to the attention of the employer.

DISCLAIMER: This information is general in nature and is meant as a guide for members of Washington Employers. As such, it is not intended to be, nor should it be used as, legal or management advice. If you have a question about a specific situation, please contact a Washington Employers’ professional staff member at (206) 329-1120.