

Wage & Hour Tip: Payroll Deductions Policy

Implement a Payroll Deductions Policy to Take Advantage of the FLSA “Safe Harbor”

April 13, 2015

Last month’s **Tip of the Month** reminded employers that communicating and maintaining an overtime policy can minimize liability for unauthorized overtime hours. This month, we focus on a second way employers can protect against wage and hour liability: the inclusion of a payroll deductions policy to take advantage of the “safe harbor” protection against liability for misclassification of employees based on the failure to pay employees on a salary basis.

As you recall, to be exempt from overtime, an employee must be performing duties recognized as exempt under the Fair Labor Standards Act (“FLSA”) and must be paid on a “salary basis.” To be paid on a “salary basis” the employee must receive a predetermined amount of compensation each pay period (at least \$455/week) which cannot be reduced due to variations in the quality or quantity of the employee’s work. An exempt employee must receive the full salary for any week in which the employee performs any work, subject only to certain limited deductions.

Employers jeopardize employees’ exempt status by making improper deductions from salaries. A payroll deductions policy which meets certain requirements provides employers with the opportunity to reduce overtime liability which might otherwise accrue under the FLSA if improper deductions are made and employees are therefore found to be inappropriately treated as exempt.

A payroll deduction policy only provides a safe harbor if the employer: (1) has a “clearly communicated” policy prohibiting improper deductions, including a complaint mechanism; (2) reimburses employees for any improper deductions; and (3) makes a good faith commitment to comply in the future. The safe harbor is not effective where the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

A good payroll deduction policy should include an explanation of how exempt employees will be paid on a salary basis, with only limited deductions for certain reasons permitted by law, including for social security, taxes, participation in company-sponsored benefit and retirement plans, absence from work for one or more full days taken in compliance with the company’s sickness or disability policy, absence from work which is covered by the Family and Medical Leave Act, absence due to certain types of suspensions, and full or partial days not worked during the initial or terminal week of employment.

For more information on implementing or reviewing a payroll deductions policy, contact a member of the [Employment Law Group](#).