

Wage & Hour Tip: Employee's Exempt Status

What Does Paid "on a Salary Basis" Mean?

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Generally, to qualify as exempt from **overtime requirements** under the federal Fair Labor Standards Act's "white collar exemptions," an employee must meet certain tests regarding his or her job duties and must be paid on a salary basis. (N.B., applicable regulations provide for exceptions from the salary requirement for certain sales employees, teachers, employees practicing law or medicine or to certain situations where an employee is paid on a fee basis.)

Understanding what qualifies as "a salary basis" and how to maintain the "salary basis" is thus essential to maintaining an employee's exempt status. An employee is paid on a salary basis only if he or she is paid a predetermined salary of at least \$455 per week. To maintain exempt status, the salary amount cannot be reduced because of variations in the quality or quantity of the employee's work, and in general, employers must ensure the employee's salary amount is paid for each and every workweek in which work is performed.

This means that if an exempt employee is absent an employer may not dock, deduct, or reduce the employee's salary without risking the loss of the employee's exempt status. Employers may not reduce an employee's salary even if it is the employer who initiates the absence, e.g., by closing the workplace for a holiday or furlough.

There are **certain circumstances** set forth in Department of Labor regulations, 29 C.F.R. §§ 541.602-605 (and, as applicable, state law), under which an employer might make a deduction without losing the employee's exemption. For example, employers need not pay exempt employees for any workweek in which they perform no work at all. An employer might also take a deduction when: an exempt employee is absent from work for personal reasons other than sickness or disability; an exempt employee is absent for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; an employer offsets amounts an employee receives as jury or witness fees, or military pay; an employer imposes good faith penalties for infractions of certain safety rules; and when an employer imposes a disciplinary suspension of one or more full days pursuant to workplace conduct policies. Employers should check with legal counsel before making a deduction pursuant to one of these exceptions.

For more information on this topic, please contact a member of the **Employment Law Group**.