

Wage & Hour Insights

Guidance & Solutions for Employers



Can We Suspend An Exempt Employee Without Pay? [Wage & Hour FAQ]

By Bill Pokorny February 17, 2012



Q. One of our salaried exempt employees appears to have violated our sexual harassment policy. We would like to suspend him without pay for 3 days. Is this allowed under the FLSA?

A. Maybe, but check your state's laws as well.

With a few specific exceptions, employees whose duties qualify them as executive, administrative and professional employees under the Fair Labor Standards Act can be considered exempt only if they are paid on a "[salary basis](#)." This means for each week in which the employee performs any work, he or she must receive a fixed weekly salary that does not vary regardless of the number of hours worked or the quality or quantity of work performed. Taking improper deductions from an exempt employee's salary can potentially result in loss of exempt status not only for the affected employee, but for all employees in the same job classification.

There are, however, certain exceptions to the rule against salary deductions. For example, if an employee is absent for one or more full workdays for personal reasons other than sickness or disability, the employee's salary can be reduced proportionately. Likewise, an exempt employee's salary can be reduced for full-day absences due to sickness or disability if the employer provides paid sick leave or other disability compensation.

With respect to this specific question, the regulations also allow for salary deductions for "unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules" "imposed pursuant to a written policy applicable to all employees." In the example cited above, the sexual harassment policy is (hopefully) in writing, and (hopefully) applies generally to all employees in the organization. Consequently, suspending the employee for three full days without pay under these circumstances likely would not violate the FLSA.

But that's not the end of the story. While most states follow the U.S. Department of Labor's rules regarding exempt status, this is not universally so. In our great state of Illinois, for one, the General Assembly specifically rejected the 2004 updates to the FLSA regulations that allowed for disciplinary suspensions for violations of written workplace conduct rules. Thus, in Illinois, an exempt employee can be suspended without pay for disciplinary reasons only for violating a "safety rule of major significance," such as rules "prohibiting smoking in explosives plants, oil refineries, and coal mines."

So what can an employer in Illinois do if it wants to impose discipline that will hit an exempt employee's pocketbook without terminating the individual's employment? There are a few options:

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- Suspend the employee for a full week. Provided that the employee does not perform any work during the week, no salary is due. However, no work means no work. Requiring the employee to participate in a conference call or respond to e-mails during the suspension could obligate the employer to pay the employee's full salary for the week, converting a disciplinary suspension into a paid vacation.
- Require the employee to use available paid vacation or PTO while on suspension. So long as the employee's take-home pay is not reduced, deducting from the employee's bank of paid leave time does not result in loss of the employee's exempt status.
- If the employee is eligible for any sort of discretionary bonus or other compensation in addition to their salary, consider reductions in those amounts if that is consistent with any applicable policies, plans or agreements.
- Factor the infraction in to future compensation adjustments. While after-the-fact salary deductions are not permitted, *bona fide* prospective salary adjustments are allowed.

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