

Wage & Hour Insights

Guidance & Solutions for Employers



Does An Exempt Employee Who Calls In Sick The Day Before Thanksgiving Get Holiday Pay? [Wage & Hour FAQ]

By Bill Pokorny on November 22, 2011



Q. Our holiday pay policy says that employees must be at work the day before and the day after a holiday. Our office is closed Thursday and Friday for Thanksgiving. If an exempt employee works Monday and Tuesday but calls in "sick" on Wednesday, can we deny the employee holiday pay?

A. Many employers have policies like this one. The intent behind them is to discourage employees from extending their holiday weekends through strategic use of unscheduled sick time or personal days. With hourly employees, the issue is relatively simple from a wage & hour perspective: follow your policy (and any applicable union contract or employment agreement) and make sure the employee is paid for any time actually worked.

For exempt employees, the problem is a bit more complicated. Remember that to qualify for the most commonly used exemptions - the "white collar" exemptions for executive, administrative, and professional employees - employees must (with some exceptions) be paid on a "salary basis." This means that an exempt employee must receive his or her full salary for any workweek in which he or she performs any work, regardless of the number of hours worked or the quality or quantity of work performed. Deductions are permitted for some disciplinary suspensions, purely personal absences and, if the employer has a policy providing for paid sick leave, for absences due to personal injury or illness. However, employers cannot take deductions for absences occasioned by the employer or resulting from the operating requirements of the employer's business. In other words, the fact that the employer is closed for business on a holiday does permit the employer to deduct from an exempt employee's salary, even if the employee would not be eligible for "holiday pay" under the employer's policies.

So if you cannot take a salary deduction, what can you do to curb abuse of sick or personal leave by exempt employees around the holidays? One solution would be to deduct an additional day or two, as applicable, from the employee's available paid vacation or personal leave time. This is permissible under the FLSA, as the exempt employee still receives his or her full salary for the week. However, if an employee has exhausted all available paid leave the full salary must still be paid.

Other alternatives for managing this situation include requiring the employee to make up the extra hours (or possibly even work on the holiday), or imposing discipline without any adjustment to pay. Of course, if those alternatives seem too punitive for the holiday season, you could also simply let the issue go, though if you do so you should be sure that all similarly-situated employees are treated in the same manner.

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