

Docking pay: FLSA compliance tips

The Fair Labor Standards Act restricts the docking of employees' pay. Many times employers' decisions on docking will push an employee from an exempt classification to a nonexempt, or push an employee whose pay has been docked into court.

Employers must know the FLSA regulations that determine who they can dock and under what circumstances; how paid leave banks factor into docking decisions; and how to handle pay docking when issues like damage to company property and inclement weather are involved.

1. *When can exempts' pay be docked without jeopardizing their exempt status?*

You can dock an exempt employee's salary under the following circumstances:

- Absences for a full day or more for personal reasons, not including illness or injury.
- Absences for a full day or more due to illness or injury, in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary due to illness or injury.
- Unpaid leave in compliance with the Family and Medical Leave Act.
- Any workweek in which no work is performed.
- Discipline for major safety rule infractions.
- Unpaid disciplinary suspensions of one or more days imposed in good faith for workplace conduct rule violations

2. *What deductions can't an employer make from exempts' pay?*

Deductions for the following reasons may affect exempts' status:

- temporary military leave;
- jury duty;
- absences of less than a full day; and
- absences caused by the employer or by operating requirements of the business, such as lack of work, unless the deduction extends through an entire week.

As for the first two, if military leave or jury duty begins midweek, exempts must be paid their full salaries. You may, however, offset any military or jury duty pay they receive from their salary. Also, if exempts are out for a full week, they need not be paid at all.

3. *May an employer withhold pay from a nonexempt employee who fails to turn in a time sheet for the week?*

No, you can't legally dock this nonexempt employee. Under the FLSA, you must pay nonexempt employees for every hour worked. In addition, the responsibility for keeping accurate records of employees' hours worked falls squarely on the employer's shoulders. By the way, you also couldn't withhold exempts' pay in this situation.

4. *Does deducting from a paid leave bank for partial-day absences (e.g., when an employee leaves a couple of hours early to go to a doctor's appointment) affect exempt employees' status?*

It depends. The Department of Labor says no, provided you have a bona fide benefits plan and exempts still receive their full salaries every payday. **Caution:** If exempts run out of leave time and take a partial-day absence, they must receive their full salary.

5. Can an employer dock employees' pay for circumstances beyond their control, such as inclement weather?

The definition of exempt versus non-exempt employees under the FLSA enables the two categories of employees to be treated differently in terms of payment for hours not worked. Nonexempt or hourly employees must be paid for every hour worked and for overtime, but do not need to be paid for hours not worked, no matter whose fault it is. Exempt or salaried employees, on the other hand, may rarely be docked.

When nonexempt employees complain about losing a day's pay for circumstances beyond their control, point out that unlike exempt employees, they get paid overtime when they work longer than 40 hours in a week. You can also give them the option of substituting a vacation day for the day lost.

6. Is it legal to dock an hourly employee's pay for inadvertent damage to company property?

Under the FLSA, deductions for the cost of any items that are considered primarily for the employer's benefit or convenience may not be made from employees' wages if it would reduce their earnings below the minimum wage or cut into their overtime compensation. This rule applies even if an economic loss suffered by the employer is due to employees' negligence. Items that are considered to be for the employer's benefit or convenience include the following.

1. Tools used in employees' work.
2. Damages to the employer's property by employees.
3. Financial losses due to clients not paying bills.
4. Theft of the employer's property by employees.

However, sometimes state laws contain more severe restrictions on deductions from employees' wages. If this is the case, you would have to obey state law. To find out how your state handles this issue, you should contact your state's labor department.