

Disciplining tardy, exempt employees

Q. We have an exempt employee who is consistently late a few times a week, arriving anywhere from a few minutes to a couple of hours late. Can we discipline him for being consistently late? In addition, can we require him to work at set times—for example from 9 am to 5 pm?

A. Yes, you can do both. The FLSA requires that all employees be paid at least the minimum wage and overtime for all hours in excess of 40 per week. But the overtime requirements do not apply to “exempt” employees. An exempt employee generally must be paid a fixed salary each workweek regardless of how many hours he or she actually worked. If you dock an exempt employee’s pay for working less than 40 hours, you incur a significant risk of losing exempt status for that employee. Docking like that violates the “salary basis” test.

Although you cannot dock an employee’s pay for tardiness, you can require him to be present during working hours and discipline him if he is not. This could include a disciplinary warning to the personnel file, up to termination for repeated violations. You also can consider tardiness at evaluation time.