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Never threaten deductions from exempts' pay

Exempt employees aren’t entitled to overtime; hourly workers are. But one of the requirements for being classified as exempt under the manager or executive categories (and others) is that employees are paid on a salary basis. They must receive their full pay regardless of the quality or quantity of the work performed in any given week.

If a supervisor tells an exempt employee that his pay will be cut for poor performance and the employer follows through on the threat, the exemption may disappear—creating nonexempt, hourly classification for an entire group of similarly situated employees. That means they would all be due overtime for all hours over 40 they work in a week.

Lesson: A supervisor’s single threat leading to a salary deduction could cost your company millions.

Recent case: David and several other store managers for a tile retailer were classified as exempt. Each managed one store. They were paid a set salary, plus bonuses. They received no overtime pay when they worked more than 40 hours per week, which happened frequently.

Trouble began when a senior manager sent an email criticizing sales performance. The email threatened bonus and salary deductions. Later, an internal audit revealed that 14 store managers had salary deductions taken. These totaled just $5,000 and were repaid following the audit.

However, that was enough to certify a class action and let a misclassification lawsuit continue. If the managers can tie the email to the deductions, they could collect overtime for all managers at the employer’s stores nationwide. (*Rebischke v. The Tile Shop,* No. 14-624, DC MN, 2015)

Final note: It bears repeating: Never make a performance deduction from an exempt employee’s salary. Also, be sure you understand exactly when and how you can make salary deductions. The rules are complicated and a mistake can be expensive.

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