

Can we deduct hourly FMLA leave for exempt staff?

Q. We have an exempt administrative employee who is on intermittent FMLA leave. She's unable to work on Fridays for two or three hours due to a serious health condition. By policy, she must use any accrued sick leave when she is out sick, typically in whole-day increments. Can we charge her sick time in hourly intervals because she is utilizing FMLA intermittent leave even if we charge her in larger blocks when she is just plain sick? — T.T., North Carolina

A. Yes. Typically, deductions from an employee's salary in increments of less than a full day jeopardize his or her exempt status under the FLSA because it begins to treat that employee like an hourly worker. The FMLA regulations, however, specifically permit employers to make deductions from an exempt employee's salary for any hours taken during a workweek as intermittent or reduced-schedule leave without affecting the employee's exempt status.

In other words, an employee will remain exempt even if an employer makes deductions from the employee's salary for unpaid intermittent or reduced-schedule leave.