

U.S Department of Labor Clarifies Rules on Deductions From Salaried Employees, Studying English at Home



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The Federal Fair Labor Standards Act (FLSA) requires employers to pay employees the Federal minimum wage, overtime after 40 hours in a seven-day pay week, and abide by restrictions on the employment of child labor. The FLSA exempts employees from the overtime requirement if they meet the requirements of one of the exempt categories: executive employees; administrative employees; professional employees; or outside sales employees. In addition to fitting into one of the exempt categories, exempt employees (with very few exceptions) must be paid on a salary basis.

Under the FLSA, employees are considered salaried if they earn a base weekly wage regardless of the quality or quantity of work performed. The FLSA generally allows employers to provide employees with payments over and above the base salary to reward effort or performance but more strictly limits employer ability to pay an employee less than the full salary in any workweek.

In an Opinion Letter released March 27, 2006, the Department of Labor advised that an employer may

not impose a fine on employees who damage or lose equipment used in performing their jobs, such as laptop computers and cell phones. The Opinion letter provides that:

The WHD [Wage Hour Division] takes the position in its enforcement of the FLSA that deductions from the salaries of otherwise exempt employees for the loss, damage, or destruction of the employer's funds or property due to the employees' failure to properly carry out their managerial duties... would defeat the exemption because the salaries would not be "guaranteed" paid "free and clear" as required by regulations...

The Department of Labor draws no distinction between such fines or reimbursement requirements that involve a deduction from payroll or the employee making an out-of-pocket payment to the employer. In either circumstance, the Department of Labor considers these requirements to be a reduction in base pay inconsistent with salaried status.

The Opinion Letter further cautioned that while fine/reimbursement policies are permissible for nonexempt, hourly employees, no reduction in pay can result in an employee receiving less than the minimum wage or less than time and one-half the regular rate for overtime hours.

In a second Opinion Letter released the same day, the Department of Labor stated that an employer can establish minimum weekly hours of work for salaried exempt employees. Employees who fail to meet the minimum hour requirement may be disciplined. However, discipline that

reduces employee compensation may cause the employee to lose exempt status. While the FLSA does allow employers to impose disciplinary suspensions on exempt employees, such suspensions can only be for violations of generally applicable workplace rules, "not performance or attendance issues."

In a third Opinion Letter released on March 27, 2006, the Department of Labor advised that employees who voluntarily take study materials home to improve their English language skills need not be compensated for home study time. The employer who posed the question provides employees with paid work time to improve English skills. An employee asked to take the materials home so he could work on his language skills and share the materials with his family. The Department of Labor applied the four-part test in 29 C.F.R. Part 785.27 for determining whether training time is compensable work time:

1. whether attendance/participation outside normal work hours;
2. whether attendance/participation is voluntary;
3. whether the training is directly related to the job;
4. whether the employee is performing productive work.

The Department of Labor noted that while the employer indirectly benefited from the employee gaining better language skills, this training was not so directly related to the


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employee's job as to require that the extra study time be compensated.

A Word About Opinion Letters

Employees who believe they have been denied minimum wage or overtime may either file a complaint with the Department of Labor or file a private lawsuit. In enforcing the FLSA, Department of Labor investigators are obligated to follow the guidance contained in the Opinion Letters. The court system is not obligated to follow the Opinion Letters but, generally, give great deference to the Department of Labor's interpretation of the FLSA. Opinion Letters from the last several years can be accessed from the Department of Labor Web site at www.dol.gov. 

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