



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

March 2, 2009

Dear **Name***:

Enclosed is the response to your request for an opinion letter signed by the then Acting Wage and Hour Administrator Alexander J. Passantino on January 16, 2009 and designated as Wage and Hour Opinion Letter FLSA2009-33. It does not appear that this response was placed in the mail for delivery to you after it was signed. In any event, we have decided to withdraw it for further consideration by the Wage and Hour Division. We will provide a further response in the near future.

The enclosed opinion letter, and this withdrawal, are issued as official rulings of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See [29 C.F.R. §§ 790.17\(d\), 790.19](#); *Hultgren v. County of Lancaster, Nebraska*, 913 F.2d 498, 507 (8th Cir. 1990). Wage and Hour Opinion Letter FLSA2009-33 is withdrawn and may not be relied upon as a statement of agency policy.

Sincerely,

John L. McKeon
Deputy Administrator for Enforcement



FLSA2009-33

This Opinion Letter is withdrawn.

January 16, 2009

Dear **Name***:

This is in response to your letter inquiring whether certain salary deductions are permissible for employees exempt under Fair Labor Standards Act (FLSA) section 13(a)(1)* and the appropriate ways to calculate salary deductions for exempt employees. It is our conclusion that the proposed salary deductions are permissible.

You pose three questions relating to salary deductions under the salary-basis rules set forth in 29 C.F.R. Part 541. Your first question is whether a salary deduction is permissible when an exempt employee is absent for a full day, but does not have enough leave time in his or her leave bank to cover the entire absence. Your second and third questions relate to full day absences for days on which an employee is scheduled to work fewer or greater than eight hours and whether deductions for such absences may be made using an hourly equivalent. We assume from the facts presented in your letter that the full day absences are either for personal reasons or for illness or disability and that your client has a “bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability.” We further assume that the employees are employed in a bona-fide executive, administrative, or professional capacity, as those terms are defined in the regulations, 29 C.F.R. Part 541, and fulfill the requirements for the section 13(a)(1) exemption.

An employee will be considered to be paid on a salary basis if he or she “regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee’s compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.” [29 C.F.R. § 541.602\(a\)](#).

Deductions may be made, however, when the employee is absent from work for one or more full days for personal reasons, other than sickness or disability. 29 C.F.R. § 541.602(b)(1). Thus, if an employee is absent for two full days to handle personal affairs, the employee’s salaried status will not be affected if deductions are made from the salary for two full-day absences. *Id.* If an exempt employee is absent for one and one-half days for personal reasons, however, the employer may deduct only for the one full-day absence. *Id.*

Deductions from salary may also be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents), if the deductions are made “in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability.” 29 C.F.R. § 541.602(b)(2). Thus, if the employer’s particular plan provides compensation for such absences, deductions for absences of one or more full days because of sickness or disability “may be made before the employee

* Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder.” *Id.*

Deductions from an employee’s guaranteed salary for absences may only be taken under section 541.602(a) if the employee misses one or more full days of work. *Id.* The regulations do not permit salary deductions for partial day absences. If the absence is for one full day, however, the regulations do not prohibit a deduction equivalent to a partial day salary. *See* Wage and Hour Opinion Letter May 27, 1999 (copy enclosed). The regulations only prohibit deductions from an employee’s guaranteed salary for absences that are less than one full day in duration. In other words, if the absence is one full day in duration, the employer may deduct one full day’s pay or less. Therefore, in answer to your first question, if an employee is absent for one or more full days, but does not have enough time in his or her leave bank to cover the entire absence, the employer may make a deduction from the employee’s pay for any portion of the full-day absences that is not accounted for by the leave bank.

You also ask whether an employer may calculate the permissible deduction using the hourly equivalent of the time missed by the employee if the day of the absences is a day on which the employee is scheduled to work fewer or greater than eight hours. The regulations provide that when taking a permissible deduction under 29 C.F.R. § 541.602(b), an “employer may use the hourly or daily equivalent of the employee’s full weekly salary or any other amount proportional to the time actually missed by the employee.” 29 C.F.R. § 541.602(c). Therefore, if an employee is absent from a shift scheduled to be shorter or longer than the employee’s regular shift, the employer may take a deduction in proportion to the number of hours missed. Again, however, you should note that deductions are not permissible if the employee is absent for less than one full day of work.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your request.

Sincerely,

Alexander J. Passantino
Acting Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**