

## Fact Sheet #70: Frequently Asked Questions Regarding Furloughs and Other Reductions in Pay and Hours Worked Issues

The [Department of Labor's](#) (DOL) [Wage and Hour Division \(WHD\)](#) is responsible for administering and enforcing some of our nation's most comprehensive labor laws, including the minimum wage, overtime, recordkeeping, and youth employment provisions of the [Fair Labor Standards Act \(FLSA\)](#).

The following information is intended to answer some of the most frequently asked questions that have arisen when private and public employers require employees to take furloughs and to take other reductions in pay and / or hours worked as businesses and State and local governments adjust to economic challenges.

### **1. If an employer is having trouble meeting payroll, do they need to pay non-exempt employees on the regular payday?**

In general, an employer must pay covered non-exempt employees the full minimum wage and any statutory overtime due on the regularly scheduled pay day for the workweek in question. Failure to do so constitutes a violation of the FLSA. When the correct amount of overtime compensation cannot be determined until sometime after the regular pay period, however, the requirements of the FLSA will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable.

### **2. Is it legal for an employer to reduce the wages or number of hours of an hourly employee?**

The FLSA requires that all covered non-exempt employees receive at least the applicable Federal minimum wage for all hours worked. In a week in which employees work overtime, they must receive their regular rate of pay and overtime pay at a rate not less than one and one-half times the regular rate of pay for all overtime hours. The Act does not preclude an employer from lowering an employee's hourly rate, provided the rate paid is at least the minimum wage, or from reducing the number of hours the employee is scheduled to work.

### **3. Does an employer need to pay an hourly employee for a full day of work if he or she was scheduled for a full day but only worked a partial day due to lack of work?**

The FLSA does not require employers to pay non-exempt employees for hours they did not work.

### **4. In general, can an employer reduce an otherwise exempt employee's salary due to a slowdown in business?**

Reductions in the predetermined salary of an employee who is exempt under Part 541 of the Department of Labor's regulations will ordinarily cause a loss of the exemption. Such an employee

must then be paid the minimum wage and overtime required by the FLSA, as discussed in **FAQ #2** above. In some circumstances, however, a prospective reduction in salary may not cause a loss of the exemption. See **FAQ #7** below.

Section 13(a)(1) of the FLSA exempts from minimum wage and overtime pay “any employee employed in a bona fide executive, administrative, or professional capacity” as defined in [29 C.F.R. 541](#). An employee qualifies for exemption if the duties and salary tests are met. See [Fact Sheet #17A](#).

FLSA section 13(a)(1) requires payment of at least \$455 per week on a “salary” basis for those employed as exempt executive, administrative, or professional employees. See [Fact Sheet #17G](#). A salary is a predetermined amount constituting all or part of the employee’s compensation, which is not subject to reduction because of variations in the quality or quantity of the work performed.

An employer must pay an exempt employee the full predetermined salary amount “free and clear” for any week in which the employee performs any work without regard to the number of days or hours worked. However, there is no requirement that the predetermined salary be paid if the employee performs no work for an entire workweek. Deductions may not be made from the employee’s predetermined salary for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available. Salary deductions are generally not permissible if the employee works less than a full day. Except for certain limited exceptions found in [29 C.F.R. 541.602\(b\)\(1\)-\(7\)](#), salary deductions result in loss of the section 13(a)(1) exemption.

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough disqualify the employee from being paid on a salary basis only in the workweek when the furlough occurs and for which the pay is accordingly reduced under [29 C.F.R. 541.710](#). See **FAQ #9** below.

Physicians, lawyers, outside salespersons, or teachers in bona fide educational institutions are not subject to any salary requirements. Deductions from the salary or pay of such employees will not result in loss of the exemption.

## **5. Can an employer reduce the leave of a salaried exempt employee?**

An employer can substitute or reduce an exempt employee’s accrued leave (or run a negative leave balance) for the time an employee is absent from work, even if it is less than a full day and even if the absence is directed by the employer because of lack of work, without affecting the salary basis payment, provided that the employee still receives payment equal to the employee’s predetermined salary in any week in which any work is performed even if the employee has no leave remaining.

## **6. Can a salaried exempt employee volunteer to take time off of work due to lack of work?**

If the employer seeks volunteers to take time off due to insufficient work, and the exempt employee volunteers to take the day(s) off for personal reasons, other than sickness or disability, salary deductions may be made for one or more full days of missed work. The employee’s decision must be completely voluntary.

## **7. Can an employer make prospective reduction in pay for a salaried exempt employee due to the economic downturn?**

An employer is not prohibited from prospectively reducing the predetermined salary amount to be paid regularly to a Part 541 exempt employee during a business or economic slowdown, provided the change is bona fide and not used as a device to evade the salary basis requirements. Such a predetermined regular salary reduction, not related to the quantity or quality of work performed, will not result in loss of the exemption, as long as the employee still receives on a salary basis at least \$455 per week. On the other hand, deductions from predetermined pay occasioned by day-to-day or week-to-week determinations of the operating requirements of the business constitute impermissible deductions from the predetermined salary and would result in loss of the exemption. The difference is that the first instance involves a prospective reduction in the predetermined pay to reflect the long term business needs, rather than a short-term, day-to-day or week-to-week deduction from the fixed salary for absences from scheduled work occasioned by the employer or its business operations.

#### **8. Can an employee still be on-call or performing work at home during a furlough day?**

Whether on-call time is hours worked under the FLSA depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time).

For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait." An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is allowed to leave a message where he/she can be reached is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

Employees who perform part or all of their normal job duties during a furlough day are working while performing such duties.

#### **9. Are the rules for paying furloughed employees different for State and local governments?**

For non-exempt public employees, **see FAQ #2**.

For salaried exempt employees, in the case of public sector employees, a specific rule applies to furloughs as described in the following regulatory text, [29 C.F.R. 541.710](#):

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

#### **10. Does it matter if the State or local government employee is considered an essential or critical employee for the purposes of a required furlough?**

The application of the FLSA is not affected by the classification of an employee as essential or critical for the purposes of a required furlough.

#### **11. What remedies are available to correct violations of the FLSA when employees are not paid on a timely basis?**

- a. The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages or for interest on the back wages, or the Secretary of Labor may bring suit for an injunction against the failure to pay wages when due.
- b. Employees who have filed complaints or provided information during an investigation are protected under the law. They may not be discriminated against or discharged for having done so. If they are, they may file a suit or the Secretary of Labor may file a suit on their behalf for relief, including reinstatement to their jobs and payment of wages lost plus monetary damages.
- c. An employee may file suit to recover back wages, and an equal amount in liquidated damages, plus attorney's fees and court costs. Please note that the U.S. Supreme Court has ruled that the Eleventh Amendment prohibits employees of State governments from filing such suits against their State employers for monetary relief in federal courts (under Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996)), and in State courts unless the State waives its sovereign immunity (under Alden v. Maine, 527 U.S. 706 (1999)).
- d. Civil money penalties may be assessed for repeat and / or willful violations of the FLSA's minimum wage or overtime requirements.
- e. Employers willfully violating the law also may face criminal penalties, including fines and imprisonment.

#### **ADDITIONAL INFORMATION**

The Wage and Hour Division is available to assist. For more information regarding the FLSA, visit the WHD Web site at [www.wagehour.dol.gov](http://www.wagehour.dol.gov) or call our toll-free help line, available 8 a.m. to 8 p.m. eastern time, at 1-866-4US-WAGE (1-866-487-9243)