

Featured Professionals

Joseph M. Sokolowski

Related ServicesEmployment, Labor &
Benefits**Employment Question of the Day: April 8, 2020****Legal Update**

04.08.2020

By Joseph M. Sokolowski

Question**Can I deduct from, or reduce, the salary of an exempt employee without losing exempt status during these uncertain and unprecedented times?****Answer**

Yes, under certain circumstances an employer can deduct from, or reduce, the salary of an exempt employee.

The COVID-19 outbreak has wreaked havoc on American businesses, as millions of employees have lost their jobs and many businesses have been forced to close their doors pursuant to state directives or otherwise. This has caused employers to consider less conventional ways to reduce labor costs, including among their exempt employee ranks. If done properly, an employer can reduce compensation for its salaried exempt workforce without violating state and federal wage and hour laws.

An employee who is exempt under the federal Fair Labor Standards Act (FLSA), and similar state laws, is entitled to their full guaranteed salary for any week in which they perform *any* work. However, an employer may legally deduct from the salary of an exempt employee, without losing exempt status, in certain circumstances. These circumstances include:

- When the employee is absent for one or more full days for personal reasons, other than sickness or disability
- For unpaid leave under the Family and Medical Leave Act

During prosperous times, many employers overlook this salary deduction option and instead pay the exempt employee's full guaranteed weekly salary, allowing time off as needed for personal purposes. However, if an exempt employee needs to miss work in order to care for children home from school or daycare due to closure, or care for a family member who may be sick, then the employer can make deduction from the employee's salary for those days missed, as long as any deductions are in full day increments.

For example, if an exempt employee is absent for three days to care for a child, the employer may make deduction from the employee's salary for those three days. If the employee is absent for a day and a half, the employer may make a one day salary deduction. Also, if the employer's place of business is open and an exempt employee simply refuses to come to work for fear of getting sick, an employer may also make full day salary deductions for any full days missed from work for this reason.

Note, however, that this analysis assumes that the employer is not obligated to provide paid leave under the FFCRA. If the employer is covered by the FFCRA and the employee qualifies for paid sick leave or extended FMLA leave under the FFCRA, then the FFCRA's provisions for paid leave must be followed.

Another option to reduce labor costs for salaried exempt employees is to reduce their salary. The Department of Labor has indicated that a prospective reduction of an exempt employee's salary will not cause a loss of the employee's exempt status if the reduction is due to a business or economic slowdown and the deduction is not made based on day-to-day or week-to-week determinations of operating requirements. In other words, the reduction in salary should reflect long term business needs.

An employer instituting salary reductions for any exempt employees should also ensure that the reduction does not bring the employee below the FLSA minimum salary threshold (currently \$684 a week). An employer choosing to make reduction in an exempt employee's salary should also keep in mind that it may have certain notice requirements under various state and local wage theft laws.

Takeaway

Labor costs are often one of the largest operating expenses of an employer. During these unprecedented times, it is more important than ever for companies to be able to control these costs in order to remain economically viable. There are ways to manage and reduce labor costs while avoiding wage and hour violations, but it is critical that employers remember to comply with all applicable federal, state *and* local laws, as employees will be entitled to the broadest protection available.

Please contact your Fredrikson & Byron attorney if you need help navigating any of these complex wage and hour issues.