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This is in reply to your letter requesting an opinion as to whether certain deductions from the salaries of Registered Nurses (RNs) would defeat the minimum wage and overtime pay exemption contained in section 13(a)(1) of the Fair Labor Standards Act (FLSA). We regret the delay in responding to your inquiry.

You state that your client is a hospital and in conformity with the provisions of a collective bargaining agreement (CBA), the RNs are considered to be salaried professional employees within the meaning of section 541.3 of Regulations, 29 CFR Part 541. You further state that the employees are paid biweekly, and that the hospital does not make deductions from their salaries for absences of less than one day in accordance with section 541.118 of the regulations. However, the CBA permits suspension without pay from one to five days should the RNs violate the hospital's or the State's rules governing health care employees. These rules address concerns of patient well-being, safety, and job performance. The rules require safe and competent performance of assigned duties as well as prompt and regular attendance when the RNs are scheduled for work.

In light of the above, you ask the following questions:

- Q. 1. May the hospital suspend a RN for disciplinary reasons without pay for one full week notwithstanding payment of a salary on a biweekly basis without affecting the employee's exempt status?

- A. 1. Section 13(a)(1) of FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative or professional capacity as those terms are defined in the appropriate section of the regulations. An employee may qualify as a bona fide professional employee if all the pertinent tests relating to duties, responsibilities, and salary, as discussed in section 541.3 of the regulations, are met. One such test contained in section 541.118 of the regulations requires that an otherwise exempt employee be paid on a salary basis.

Section 541.118(a) states, in part, that an employee need not be paid for any workweek in which he or she performs no work. Therefore, the answer to your first question is in the affirmative.

Q. 2. May the hospital suspend a RN without pay for disciplinary reasons for periods of less than one week but for one or more full days without affecting the employee's exempt status?

A. 2. Deductions which may be made from an employee's compensation without affecting his or her exempt "salaried" status are found in sections 541.118(a)(2), (3), and (5) of the regulations. The only disciplinary type of deduction permissible is one imposed as a penalty "in good faith for infractions of safety rules of major significance." As explained in section 541.118(a)(5), safety rules of major significance embrace those intended to prevent serious danger to the workplace or to other employees, including smoking in explosive plants, oil refineries, and coal mines. This has also been construed to cover industrial security regulations promulgated by a government agency.

Disciplinary deductions made from the salary of an RN for violating rules relating to patient well-being and job performance are not the type of deductions that would be permitted by section 541.118(a)(5) of the regulations. There is not enough information in your letter for us to determine if a violation of the hospital's or the State's safety rules are the type of "safety rules of major significance" for which disciplinary deductions may be made without affecting the exempt status of an employee.

Q. 3. See our answer to question 2.

We trust that the above is responsive to your inquiry. If you have any further questions on this matter please do not hesitate to let us know.

Sincerely,

John R. Fraser
Acting Administrator