

FLSA-390

December 2, 1993

This is in response to your letter requesting an opinion as to whether the proposed pay docking and disciplinary policies for salaried employees who qualify for the minimum wage and overtime pay exemption is in compliance with the provisions of section 541.118 of Regulations, 29 CFR Part 541. You state that your client is planning to issue a clarification of its policy which would permit workweek long disciplinary suspensions of exempt employees for reasons not necessarily constituting infractions of safety rules of major significance.

Section 13(a)(1) of the 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 Regulations, Part 541. An employee may qualify for exemption if all the pertinent tests relating to duties, responsibilities and salary, as described in the appropriate section 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.

The questions you raised are answered in the order presented in your letter.

Q. 1. You ask whether your client's plan to issue a policy which would permit workweek long disciplinary suspensions of exempt employees for reasons not necessarily constituting infractions of safety rules of major significance is permissible under the FLSA.

A. 1. It would be permissible to suspend an employee for an entire week without pay and not defeat the exemption, since 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.

Q. 2. You ask whether your client's proposed modification of its military leave policy to not compensate an employee for workweeks in which he or she undertakes no work for the employer because of military leave taken in excess of the authority's twenty-one day military leave policy, where such absences result from order by military authorities for further training relating to the employee's military duties is in compliance.

A. 2. Section 541.118(a)(4) of the Regulations states that deductions may not be made for absences of the employee on temporary military leave, although the employer may offset any amounts received by the employee as military pay for a part of the week against the salary due for that particular week without loss of the exemption. However, in any workweek in which the employee performs no work for the employer, the employer need not pay the employee any part of his or her salary.

Q. 3. You also ask whether your client can treat voluntary military leave as "personal, voluntary" leave and not compensate exempt employees for days missed in excess of the

twenty-one days allowed, where such days are taken as military leave without the express order or requirement of the employee's military duties.

A. 3. There is nothing in the FLSA or the Regulations, Part 541, to prevent an employer from designating voluntary military leave as "personal, voluntary" leave and not compensable for days missed in excess of the twenty-one days allowed, where such days are taken as military leave without express order or requirement of the employee's military duties.

Q. 4. Finally, you ask whether your client can implement a policy to dock the pay of exempt employees who are absent from work for one or more full days for the purpose of taking part in court proceedings where the employees are not under statutory or other legal compulsion to be present in court (such as time spent on jury duty or under subpoena).

A. 4. Section 541.118(a)(4) of the Regulations states that deductions may not be made for absences of the employee caused by jury duty or attendance as a witness, although the employer may offset any amounts received by the employee as jury or witness fees for a part of the week against the salary due for that particular week without loss of the exemption. However, it is our opinion that absences from work to attend court proceedings where the employee is under no legal compulsion to be present in court are absences for personal reasons. Deductions from an employee's salary may be made when the employee absents him or herself from work for a day or more for such personal reasons.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client or firm which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying or requiring compliance with the provisions of the FLSA.

Sincerely,

Maria Echaveste
Administrator