

OCT 29 1998

Dear :

This is in response to your letter requesting an opinion on whether an employer may suspend an exempt employee without pay for one full week for disciplinary reasons. You also wish to know if a safety rule of major significance includes abuse or neglect of a group home client. We regret the delay in responding to your inquiry.

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, professional, or outside sales capacity. In order to qualify for exemption under this section, an employee must meet all of the tests relating to duties, responsibilities, and salary that are contained in the appropriate section of Regulations, 29 CFR Part 541 (copy enclosed).

The answer to your first question on whether an employer may suspend an exempt employee without pay for one full week for disciplinary reasons is yes. 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. The Act takes a single workweek as its standard. Therefore, it would be permissible to suspend an exempt employee (paid on a bi-weekly basis) without pay for one full week, for disciplinary reasons.

Your second question involves deductions under Section 541.118(a) which may be made from an exempt employee's pay without affecting his or her exempt "salaried" status. 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 mines. This has also been construed to cover industrial security regulations promulgated by a government agency.

Disciplinary deductions made from the salary of an exempt employee for abuse or neglect of a group home client are not the type of deductions that would be permitted by section 541.118(a)(5) of the regulations. Therefore, the use of disciplinary deductions with respect to an exempt employee for the abuse or neglect of a group home client would not be permitted.

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 questions 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,

**Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team**

Enclosure

cc: Senator Carl Levin