**FMLA and FLSA**

 In addition to meeting certain duties tests to qualify for exemption under the Regulations, Part 541, generally an employee must be paid at a rate of not less than $684 per week on a salary basis to be considered exempt. As a general rule, if the exempt employee performs any work during the workweek, he or she must be paid the full salary amount, though you may deduct pay in full-day increments when exempt employees are absent for personal or sickness reasons in conjunction with a bona fide absence plan. However, an employer is not required to pay an exempt employee the full salary for weeks in which he or she takes unpaid leave under the Federal Family and Medical Leave Act (FMLA). Leave taken under FMLA may be unpaid. The employer may pay a proportionate part of the full salary for time actually worked. Providing unpaid FMLA-qualifying leave to such an exempt employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employer may make deductions from the employee’s salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. For example, an exempt employee takes 1 day of FMLA during a workweek. The employer may pay 4/5 of their regular weekly salary to cover the 4 days actually worked.

As a reminder, per the US Department of Labor, Exempt Deductions from pay are allowed:

* When an employee is absent from work for one or more full days for personal reasons other than sickness or disability;
* For absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
* To offset amounts employees receive as jury or witness fees, or for temporary military duty pay;
* For penalties imposed in good faith for infractions of safety rules of major significance;
* For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
* In the employee's initial or terminal week of employment if the employee does not work the full week, or
* For unpaid leave taken by the employee under the Federal Family and Medical Leave Act.

In addition, deductions may be made from the pay of an exempt employee of a public agency for absences due to a budget-required furlough, and special rules apply when such employees take partial-day (or hourly) absences not covered by accrued leave.

Each of these allowable deductions are described [here.](http://webapps.dol.gov/elaws/whd/flsa/overtime/cr4.htm)

As a general rule, if the exempt employee performs any work during the workweek, he or she must be paid the full salary amount. An employer may not make deductions from an exempt employee's pay for absences caused by the employer or by the operating requirements of the business. If the exempt employee is ready, willing and able to work, an employer cannot make deductions from the exempt employee's pay when no work is available.

For a deeper dive regarding this topic, contact Catapult’s Advice team at 919-878-9222.

Written by a Catapult Advisor