



Fair Labor Standards Act Safe Harbor Policy

Background

The United States Department of Labor administers and enforces the Fair Labor Standards Act (FLSA), a federal law which requires that most employees be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. A provision in the law found at 29 CFR § 541.603, allows an employer to avoid the loss of an overtime exemption for an entire class of employees in instances where an improper deduction was made from the salary of one employee in the class. To avoid application to the entire class, the employer must adopt a policy that includes the following:

1. Indicates an intention to comply with the new regulations,
2. Includes a procedure whereby an employee may file a complaint alleging an improper deduction from salary, and
3. Establishes a prompt review procedure for complaints.

Because of the potential protection provided, such a policy is referred to as a "safe harbor" policy.

Policy Statement

The Pennsylvania State System of Higher Education (PASSHE) intends to comply with all federal regulations with respect to the Fair Labor Standards Act (FLSA). In this regard, the FLSA provides an exemption from both minimum wage and overtime payment for employees employed in bona fide executive, administrative, professional, computer, and outside sales positions. To qualify for an overtime exemption, an employee generally must be paid no less than \$23,660 a year or \$455 per week on a salary basis. (This does not apply to teachers, lawyers, or medical personnel. Certain exempt computer employees may be paid at least \$455 on a salary basis or on an hourly basis at a rate not less than \$27.63 an hour.)

Being paid on a "salary basis" refers to an employee who regularly receives a predetermined amount of compensation each pay period on a weekly or less frequent basis which cannot be reduced because of variations in the quality or quantity of work. Subject to the exceptions listed below, an exempt employee must receive his or her full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any work week in which they perform no work and will not be paid, unless appropriate accrued paid leave is utilized. If deductions are made from an employee's predetermined salary because of the employer's operating requirements, that employee is not paid on a "salary basis." If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

Deductions from pay are permissible when an exempt employee is:

1. Absent from work for one or more full days for personal reasons, other than sickness or disability;
2. Absent from work for 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;
3. In receipt of amounts such as jury or witness fees; or
4. On an unpaid disciplinary suspension for one or more full days, imposed in good faith for workplace conduct rule infractions.

Also, PASSHE is not required to pay an employee's full salary in the initial or final week of employment, for penalties imposed in good faith for infractions of safety rules of major significance, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. In these circumstances, either a partial-day or full-day deduction may be made. Finally, as a public sector employer, PASSHE operates under principles of public accountability, which permit deductions from the pay of an

exempt employee for partial-day or full-day absences due to illness, injury, or personal reasons when accrued paid leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay, if such leave is available.

PASSHE has classified those positions which are considered to be "exempt." It is the policy of PASSHE to comply with the "salary basis" requirements of the FLSA with regard to exempt employees. If you believe that an improper deduction has been made to your salary, you should immediately report this information to your Human Resource Office on a form available from the Executive Director of Organizational Development and Employee Relations.

Reports of an improper deduction from wages will be promptly investigated. If it is determined that an improper deduction has occurred, you will be promptly reimbursed for any improper deduction.