

November 17, 2004

PERSL #1388

TO: Human Resources Directors/Designees
Labor Relations Directors/Designees

FROM: Jill Pettis, Assistant State Negotiator/Compensation Manager 
Department of Employee Relations

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RE: FLSA – New Regulation for Less than a Full Work Week Suspensions for Exempt Employees

The new FLSA rules (29 C.F.R. 541.602(a)) permit employers to dock exempt employees' wages on a day-to-day basis for violations of "workplace conduct" rules that are outlined in a written policy. This means that employers now will be able to suspend employees without pay for a day or a number of days (rather than a full workweek) without violating the salary basis test for exempt employees.

The U.S. Department of Labor states that "workplace conduct" refers to serious misconduct such as sexual harassment, drug or alcohol violations, violence in the workplace, or violations of state or federal laws.

In addition, the new regulations provide a "safe harbor" that can save the exempt status of employees in the event deductions are made in violation of the FLSA. The safe harbor protects employers that:

1. have a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism for employees, and
2. reimburse employees for any improper deductions that are made and make a good faith commitment to comply with the policy in the future.

The attached procedure regarding disciplinary suspensions will be implemented effective the date of this memo. Please notify your employees of this new procedure immediately.

Questions should be directed to your Labor Relations Representative at the Department of Employee Relations.

**Procedure on Deductions from Pay for Disciplinary Suspensions
For Exempt Employees**

The State of Minnesota in compliance with the federal Fair Labor Standards Act and terms and conditions of current union contracts and compensation plans shall implement this procedure to allow suspension of exempt employees without pay for workplace misconduct.

Workplace conduct, as defined by the U.S. Department of Labor, refers to serious misconduct such as sexual harassment, drug or alcohol violations, or violations of state or federal laws.

If an employee is found to have violated written policies and/or procedures regarding proper workplace conduct as defined above, he/she may be subject to discipline in the form of an unpaid suspension of one or more days subject to the terms and conditions of the union contract/compensation plan covering the employee.

It is the State's policy to comply with the salary basis requirements of the Fair Labor Standards Act (FLSA). Therefore, we prohibit all State supervisors/managers from making any improper deductions from the salaries of exempt employees. We want employees to be aware of this procedure and ensure that the State does not allow deductions that violate the FLSA.

What To Do If An Improper Deduction Occurs

If employees believe that an improper deduction has been made to their salary, they should immediately report this information to the direct supervisor, or to the agency's Human Resources Office.

Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, employees will be reimbursed for any improper deduction made.