



Department of Management Services  
Division of Human Resource Management

# POLICY CLARIFICATION

<b>STATUTORY/RULE REFERENCE NUMBER:</b> <i>29 Code of Federal Regulation (C.F.R.) §541.710 and 29 C.F.R §541.602(b)(5)</i>	<b>TRACKING NUMBER:</b> <i>2008-#001</i>
<b>SUBJECT:</b> <i>Allowable Salary Deductions for Excluded Employees Under the Fair Labor Standards Act (FLSA)</i>	
<b>APPROVAL SIGNATURE:</b> Sharon D. Larson, Director <i>Sharon D. Larson</i>	<b>EFFECTIVE DATE:</b> <i>June 11, 2008</i>

## **Issue:**

Whether State Personnel System employers are permitted to make salary deductions from employees who meet the salary basis requirements for exemption under the FLSA as executive, administrative or professional and who had absences of less than a day when leave was not used or was not available for use.

## **Policy:**

Since 1992, the State Personnel System pay system has required **all** employees who were absent from the workplace to use leave in an amount necessary to bring the employee up to a forty-hour workweek, the regular hours for an approved extended work period, or the regular hours in a work period. If an employee did not have sufficient leave to cover the absence or elected not to use leave, the employee suffered a salary reduction commensurate with the missing work hours. This included employees whose positions met the salary basis test required for exemption by the FLSA as executive, administrative or professional.

The FLSA recognizes these principles of public accountability which, in part, demand the effective and efficient use of public funds in order to serve the public interest. If public employers are required to pay employees for time not worked and not covered by available leave, they might risk violating those principles of public accountability and state or local laws. Therefore, in accordance with FLSA regulations, State Personnel System employers will continue to reduce the salary of any employee for any work absence that is not covered by approved leave.

## **Background:**

Prior to 1992, FLSA regulations, in most instances, only allowed employers (private and government) to make deductions from an exempt employee's pay in full day increments. Therefore, an exempt employee who had no personal leave and worked only a partial day because of illness could not have his/her salary reduced. In 1992, the U.S. Department of Labor issued FLSA regulations that modified the salary basis test for state and local governments. Below is the C.F.R. that was codified on August 23, 2004, which allowed this salary reduction.

**29 C.F.R. §541.710**

*(a) An employee of a public agency who otherwise meets the salary basis requirements of Sec. 541.602 shall not be disqualified from exemption under Sec. Sec. 541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued 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.*

*(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.*

Further, salary deductions for exempt employees are also allowed for disciplinary suspensions, for no less than one or more **full work** days. Below is the C.F.R. that was also codified on August 23, 2004, which allowed this salary reduction.

**29 C.F.R. §541.602(b)(5)**

*Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.*