

safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

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

(6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works forty hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10% of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

§ 541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer has a pattern and practice of not paying employees on a salary basis. A pattern and practice of making improper deductions demonstrates that the employer did not intend to pay employees in the job classification on a salary basis. Improper deductions that are isolated or inadvertent, however, will not result in loss of the exemption. The factors to consider when determining whether an employer has a pattern and practice of not paying employees on a salary basis include, but are not limited to: The number of improper deductions; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; the size of the employer; whether the employer has a written policy prohibiting improper deductions; and whether the employer corrected the improper pay deductions.

(b) If the facts demonstrate that the employer has a policy of not paying on a salary basis, the exemption is lost during the time period in which improper deductions were made for employees in the same job classification working for the same managers responsible for the improper deductions. Employees in different job classifications who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) If an employer has a written policy prohibiting improper pay deductions as provided in § 541.602, notifies employees of that policy and reimburses employees for any improper deductions, such employer will not lose the exemption for any employees unless the employer repeatedly and willfully violates the policy or continues to make improper deductions after receiving employee complaints. Examples of notification include publishing the policy to employees at the time of hire, in an employee handbook or on the employer's Intranet.

(d) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

§ 541.604 Minimum guarantees plus extras.

(a) An exempt employee may receive additional compensation, consistent with the exemption and the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least \$425 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least \$425 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least \$425 each week paid on a salary basis also receives additional compensation based on hours worked. Such additional compensation may be paid on any basis (e.g. flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis).

(b) An exempt employee's salary may be computed on an hourly, a daily or a shift basis, consistent with the exemption and the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least \$500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid \$150 per shift consistent with the salary basis requirement.

§ 541.605 Fee basis.

(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a "fee basis" within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble