



October 28, 2005

FLSA2005-46

Dear *Name\**,

This is in response to your request for an opinion concerning the “salary basis” requirements for exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and its implementing regulations, 29 C.F.R. Part 541.

You state that healthcare institutions have specialized absence policies due to their special needs even in weather emergencies. Those absence policies provide that, if employees do not report to work during adverse weather conditions, when they are not sick and have not been advised not to report to work, the employees are docked a full day of pay and are not permitted to use their vacation or personal (leave) bank for the absence. You state that exempt employees who arrive late under such circumstances are not docked in any manner regardless of how many hours they miss of their scheduled shift. You ask whether the “salary basis” regulations, which permit deductions for one or more full days for absences for “personal reasons,” would include within the “personal reasons” exception absences for weather-related reasons. As explained further below, it is the Department’s view that an employer that remains open for business during adverse weather emergencies may make deductions, for full-day absences only, from the pay of an otherwise exempt employee who chooses not to report for work for the day(s) because of the adverse weather emergencies, and treat any such full-day absence(s) as being for “personal reasons” under the applicable regulations.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 C.F.R. Part 541. An employee may qualify for exemption if the employee meets all of the pertinent tests relating to duties, and receives compensation on a “salary basis” at not less than minimum amounts, as described in the appropriate section of the regulations. Please note that revisions to 29 C.F.R. Part 541 were published as a final rule in the *Federal Register* on April 23, 2004 (69 Fed. Reg. 22,122) and became effective on August 23, 2004 (copy enclosed).<sup>1</sup>

Under section 541.600(a), “an exempt executive, administrative or professional employee under section 13(a)(1) of the Act ... must be compensated on a salary basis at a rate of not less than \$455 per week ...” Section 541.602 defines the requirements for payment on a “salary basis,” and states that “[s]ubject to the exceptions provided in paragraph (b) of [that] section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. *An employee is not paid on a salary basis if deductions from the employee’s predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If an employee is ready, willing and able to work, deductions may not be made for time when work is not available.*” 29 C.F.R. § 541.602(a) (emphasis added).

Section 541.602(b) details the limited exceptions to the general “salary basis” rule. Deductions may be made “when an exempt employee is absent from work for one or more full days for personal reasons, *other than sickness or disability*. Thus, if an employee is absent for two full days to handle personal affairs, the employee’s salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days

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<sup>1</sup> As you know, the prior rule addressed the issues in your inquiry at 29 CFR § 541.118. Our response cites to the final regulations effective August 23, 2004; however, because there were no substantive changes in the regulatory sections pertinent to your inquiry, our substantive analysis applies equally under both the prior and the revised regulations.



for personal reasons, the employer can deduct only for the one full-day absence.” 29 C.F.R. § 541.602(b)(1) (emphasis added). Deductions may also be made with regard to absences “for one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability.” See 29 C.F.R. § 541.602(b)(2).

The Department of Labor considers an absence due to adverse weather conditions, such as when transportation difficulties experienced during a snow emergency cause an employee to choose not to report for work for the day even though the employer is open for business, an absence for personal reasons. Such an absence does not constitute an absence due to sickness or disability. Thus, under the policy you described above, an employer that remains open for business during a weather emergency may lawfully deduct one full-day’s absence from the salary of an exempt employee who does not report for work for the day due to the adverse weather conditions. Such a deduction will not violate the salary basis rule or otherwise affect the employee’s exempt status. Please note, however, that deductions from salary for less than a full-day’s absence are not permitted for such reasons under the regulations. If an exempt employee is absent for one and a half days due to adverse weather conditions, the employer may deduct only for the one full-day absence, and the employee must receive a full-day’s pay for the partial day worked, in order for the employer to meet the “salary basis” rule. See 29 C.F.R. § 541.602(b)(1).

Furthermore, an employer may not make deductions “for absences occasioned by the employer or by the operating requirements of the business.” If the employer closes operations due to a weather-related emergency or other disaster for less than a full workweek, then the employer must pay an exempt employee “the full salary for any week in which the employee performs any work without regard to the number of days or hours worked,” because “deductions may not be made for time when work is not available.” See 29 C.F.R. § 541.602(a).

You referred to a court decision from the Central District of Illinois, *Kennedy v. Commonwealth Edison Co.*, 242 F. Supp. 2d 542 (C.D. Ill. 2003), which initially held employees of that case were not paid on a salary basis under the employer’s “snow day” policy, finding the policy was not analogous to a permissible deduction for “personal reasons” because an absence due to extreme weather conditions is essentially out of the employee’s control. On reconsideration, the district court reversed and held that the employer’s snow day policy did not jeopardize the employees’ exempt status because the deductions were made from leave accounts rather than from the employees’ pay (*Kennedy v. Commonwealth Edison Co.*, 252 F. Supp. 2d 737 (C.D. Ill. 2003)). Despite the *Kennedy* Court’s stated rationale in its initial decision and order that were later vacated, it continues to be the interpretation of the Wage and Hour Division that, when an employer remains open for business during a weather emergency, and an employee chooses not to report for work for the day due to the adverse weather conditions and/or attendant transportation difficulties, the employee’s absence in that situation is considered to be an absence for personal reasons under the applicable regulations. Any full-day deduction from the salary of an exempt employee for such reason will not violate the salary basis rule or otherwise affect the employee’s exempt status.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster*, 913 F.2d 498, 507 (8th Cir. 1990).



We trust that this letter is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.  
Deputy Administrator

Enclosure

*\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*