



Quick Quiz Answer: Paid-Time-Off And The "Salary Basis"

Insights

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The answer to our July 11 [Quick Quiz](#) is, "One And One-Half Days' Worth".

To qualify for the federal Fair Labor Standards Act's executive, administrative, or professional exemption, employees usually must be paid on a "[salary basis](#)". This means that the employee must regularly receive each pay period a predetermined amount (of not less than \$455 per week) constituting all or part of his or her compensation.

With limited exceptions, this fixed amount cannot be subject to reduction based upon either the amount of time the employee works or how well he or she performs the work. The circumstances under which this salary can be reduced for part-days missed are even more restricted.

One exception to this so-called "no-docking rule" is that deductions may be made from the salary for absences of one or more *full days* caused sickness, disability, or work-related accidents, if the deduction is made under a bona fide plan, policy, or practice that provides compensation for such absences. As a practical matter, this usually means that, so long as an exempt employee has a paid-time-off allotment to cover the absence, he or she is paid the normal salary, and the absence is charged against the PTO balance.

The sick-day exception also permits proportional deductions to be made from the salary itself for *whole-workday* absences of this kind during the period:

- ◇ Before the employee qualifies for PTO, and
- ◇ After the employee exhausts the PTO allowance.

However, the sick-day exception does not authorize salary deductions for part-days missed.*

But this part-day restriction does not prevent charging these absences against PTO allotments. As the U.S. Labor Department has said, "Where an employer has a benefits plan (e.g., vacation time, sick leave), it is permissible to substitute or reduce the accrued leave in the plan for the time an employee is absent from work, whether the absence is a partial day or a full day, without affecting the salary basis of payment, if the employee nevertheless receives in payment his or her guaranteed salary." Opinion Letter of Acting Wage-Hour Administrator [FLSA2005-7](#) (January 7, 2005).

Consequently, Alice's employer is permitted to subtract the three half-days she missed, that is, the full one and one-half days' worth, from her PTO balance.

If Alice had no PTO balance remaining, then her employer could not dock her salary for *any* of the sick-time missed. This is true because she would not have been absent for a whole day on any of the three days she was out sick.

Of course, employers should also review these matters under any applicable wage laws of a state or other jurisdiction. For example, a state might take a more-restrictive position under the "salary basis" rules applying to exemptions from its own overtime requirements.

* A different exception for an employee's absences covered by the federal Family and Medical Leave Act might permit part-day salary deductions under the proper circumstances.