



## Is PDA Use Relevant As To Exempt Employees?

Insights

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Our [last post](#) provoked an inquiry about what impact, if any, after-hours or off-day use of a BlackBerry® or another personal digital assistant might have with respect to employees whom an employer treats as exempt under one of the federal Fair Labor Standards Act's executive, administrative, or professional exemptions. The U.S. Labor Department's exemption regulations for these so-called "white collar" employees require that most such employees be paid on a "salary basis" in order to be exempt. This is where the problem might arise.

Being paid on a "salary basis" means that the exempt employee regularly receives each pay period a predetermined amount of compensation which is not subject to reduction because of variations in the quality or quantity of the employee's work. Subject only to a limited, specific set of exceptions, an exempt employee must receive the full salary for every workweek in which he or she performs any work, without regard to the number of days or hours worked. To illustrate the potential consequences of PDA use, let's consider just three of the more-common exceptions to the "no-docking" rule:

- Proportional deductions may be made for absences of one or more full days when the employee performs no work due to personal reasons other than sickness or disability;
- Proportional deductions may be made for absences of one or more full days when the employee performs no work due to sickness, accident, or disability when the employee has not yet qualified for benefits under an employer's bona fide sick-pay plan, policy, or practice and when the employee has exhausted those benefits; and
- An employee who performs no work in a workweek need not be paid the salary for that workweek.

The Labor Department has been known to apply the FLSA's "hours worked" principles in evaluating whether an exempt employee has or has not performed work on a day so as to preclude or permit a deduction from his or her salary on account of the employee's absence from the job that day. Moreover, its Office of Enforcement Policy has said that no salary deduction could be made for a day when an employee called in sick but spent a half-hour reviewing files at home that day.

So, if using a BlackBerry® or other PDA for job-related purposes is often "work" (though possibly it would sometimes be *de minimis*), and if an exempt "white collar" employee engages in such activities during a personal day off, during a sick day off, or during a vacation week, can he or she be

activities during a personal-day off, during a sick-day off, or during a vacation week, can he or she be said to have taken a full day off, or to have performed no work in a workweek?

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