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SMITH MOORE LLP
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Employers Should Adopt Policies to Take Advantage of New FLSA Regulations

The United States Department of Labor's new Fair Labor Standards Act regulations went into effect on August 23, 2004. Two new provisions deal with docking the pay of salaried exempt employees.

Disciplinary deductions

- The new regulations permit employers to suspend salaried exempt employees without pay for violations of workplace conduct rules (such as discriminatory harassment or workplace violence).
- The unpaid disciplinary suspension must be for one or more full days and imposed in good faith.

"Window of Correction" for improper deductions

- When an employer has a practice of improperly docking the pay of a salaried exempt employee, the employer usually loses the exemption (and will have to pay overtime) to all employees in the same job classification working for the same manager who made the improper deduction.
- A new safe harbor provision permits employers to remedy mistakes made in deductions from exempt employees' pay without losing the exemption for any employees if the employer:
 - ◇ Adopts and clearly communicates a policy prohibiting improper deductions,
 - ◇ Includes within the policy an employee complaint mechanism,
 - ◇ Does not willfully violate the policy by continuing to make improper deductions after receiving employee complaints,
 - ◇ Reimburses the employee for any improper deductions, and
 - ◇ Makes a good faith commitment to comply in the future.

TIP

Employers should promptly 1) review employee handbooks to ensure that written workplace conduct rules contemplating full-day unpaid suspensions are in place, and 2) adopt and disseminate a valid policy prohibiting improper salary deductions and establishing a complaint mechanism.



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