

Temporary reduction in pay as a disciplinary action

Question: Is it a possibility, as a disciplinary action, to make someone work a shift for less pay as opposed to unpaid suspension – where other employees have to pick up the slack?

Answer:

You may only do this if you have a written policy in place. A public employee might have a “violation of due process claim” if there isn’t a written policy regarding temporary reduction in pay for discipline.

While paid suspensions are usually used for investigative periods, unpaid suspensions are sometimes used as a “penalty” for misconduct. This is most easily done for hourly employees.

Generally, if you intend to take money away from an employee, it should be clarified in a written policy saying where, when, and especially why. That is called due process: the employee knows it might happen. On a similar note, the Fair Labor Standards Act says that you cannot *deduct* pay from salaried exempt employees for anything other than *major* written safety violations. Other rules apply, limiting the use of suspensions without pay, so check with your county attorney.

If you have a written policy which gives the employees advance notice, put a note in his or her file specifying the reason for the deduction of pay, the exact number of hours at which they will be working at reduced pay, and clarification for the future under what circumstances that sort of penalty would be imposed again. This type of discipline should be monitored carefully by your financial audits and should be used with thoughtful discretion. This

is the sort of after-the-fact willful (not necessarily at-will) decision-making that might drive an otherwise loyal employee to another job, collective action, or a wage claim.

Also, recalculation of pay may be a problem. A computer program may not allow a change in an employee’s pay temporarily or it might be difficult for the payroll department to recalculate the pay for a short period of time.

Above all, make sure there is an existing written policy if a temporary deduction of pay is to be used as a disciplinary action.

For more information, contact CTSI at 303-861-0507.