

## Part-time disabled workers and the salary-basis test

When an employee is absent on disability leave and then wants to return to work part-time, one question that arises is how such an arrangement can affect the salary-basis test for exempt, white-collar employees.

If the employer chooses to pay the employee's regular salary to come back to work part-time without recognizing the reduced schedule, the employer may eventually encounter fraud. It is best to find a compensation approach that does not give financial incentive to engage in such conduct.

The salary-basis test requires that an employee regularly receive a predetermined amount of salary that isn't subject to reduction due to variations in the quality or quantity of work performed. Employees must also receive a minimum salary of \$455 per week to remain exempt. These general requirements apply equally to employees who work part-time.

### Full-Day Absences

The regulations under the Fair Labor Standards Act (FLSA) allow for deductions from the employee's guaranteed salary provided that the deductions are taken in accordance with a plan, policy or practice, and the time off work involves a full day or days.

### Partial-Day Absences

There are five main options to choose from when a recuperating employee's medical condition requires partial-day absences instead of full-day absences.

**Option 1:** Convert the employee to non-exempt status during the recovery period. The change will not affect the future exempt status of the employee as long as there is not any evidence that the employer used the tactic to circumvent the salary-basis test. It should not look like the salary-basis requirement is being evaded as long as the employee's change in exempt status is not

recurrent and the change is based on a doctor's determination of partial disability.

**Option 2:** If the absence is a qualifying Family Medical Leave Act (FMLA) absence, partial-day pay deductions from exempt employees' salaries are allowed in some situations. This only applies to FMLA-covered employers who are eligible for FMLA leave, and the employee's condition must meet the FMLA's definition of a "serious health condition."

**Option 3:** The employer may implement a pay reduction in conjunction with a bona fide reduction in the workweek that is not designed to circumvent the salary-basis test. A reduction in salary may occur in conjunction with an employee's reduced work week while the employee cannot work full-time due to medical reasons. However, total compensation for the work hours and any disability insurance must equal or exceed \$455 a week, or the employee is non-exempt.

**Option 4:** The employer can eliminate the circumstances that may cause a FLSA violation. For example, the employer can make sure the employee does not work any overtime while on part-time status. The employer could also pay a salary (when combined with any disability payments) that is not a reduction from the current guaranteed salary.

**Option 5:** The employer could refuse to allow the worker to come back part-time, but this raises the risk of a possible discrimination claim under the Americans with Disabilities Act. This option is the least attractive one.

For more information, visit the Department of Labor's website at [www.dol.gov](http://www.dol.gov) or contact CTSI at 303-861-0507.

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