

Hourly Pay For Exempts Under Limited Circumstances

When a full-time exempt employee goes to part-time status, the question arises as to whether it is permissible to pay the employee on an hourly basis to compensate appropriately for part-time hours.

The U.S. Department of Labor outlines limited circumstances in which an employee who is exempt need not receive the guaranteed salary but still maintains exempt status. Those circumstances are:

- An employee absent a full day for personal reasons, other than sickness or disability.
- An employee absent a full day or more because of sickness or disability, if taken in accordance with a bona fide plan, policy or practice providing wage-replacement benefits.
- For any hours not worked in the initial and final weeks of employment.
- For hours taken as unpaid time off under the Family and Medical Leave Act.
- For offsets of amounts received by an employee for jury or witness fees or military pay.
- For penalties imposed in good faith for infractions of written, posted and enforced safety rules of major significance.

If a full-time exempt employee goes to part-time status, the salary can be adjusted proportionately

for the part-time position. Then, if the part-time salary does not meet the exempt requirement of \$455 per week, the position would be considered nonexempt and the employee then could be paid on an hourly basis.

But if the adjusted salary still meets the exempt requirement (\$455 per week), the employee may not be paid on an hourly basis without losing exempt status.

The part-time exempt employee must receive the same guaranteed salary each week without respect to the number of hours worked or the quantity of work. This rule applies to the part-time position as it would to a full-time position.

What This Means For Counties

In order to accurately utilize county revenue, counties will want to closely examine whether they can pay an exempt employee hourly under the Fair Labor Standards Act, or pay them as exempt, if they go to part-time status.

If the employee was out on jury duty or begins work midway through the pay week, the county employer may want to pay the worker on an hourly basis, a possible method of capitalizing on existing revenue.

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