

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

## Top Ten Ways to Reduce Your Wage & Hour Liability

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Presented by:

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EXPAND YOUR EXPECTATIONS™

### 1. Perform Regular Self Audits

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**Self Audit**

vs



**FLSA Collective Action**

## **2. Regularly Train Your Managers**

- **Compensable time**
- **Overtime**
- **Unpaid meal breaks**
- **Salaried or hourly employees**



## **3. Include Wage & Hour Policies In Your Handbook**

- **Prohibit working off the clock**
- **Prohibit working during unpaid meal breaks**
- **Employee complaint procedures**
- **Safe harbor policy**

## **Safe Harbor**

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- **Policy prohibits improper deductions;**
- **Complaint mechanism;**
- **Reimbursement for improper deduction; and**
- **Good faith commitment to comply in the future**

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**The safe harbor does not apply if the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.**

## SAMPLE SAFE HARBOR POLICY

The law requires that the company make certain deductions from every employee's compensation, including, but not limited to, applicable federal, state, and local income taxes. Social Security taxes also must be deducted from each employee's earnings. The company matches the amount of Social Security taxes paid by each employee.

The company offers programs and benefits beyond those required by law. Eligible employees may voluntarily authorize deductions from their paychecks to cover the costs of participation in these programs. Contact your supervisor with questions concerning deductions and how they are calculated.

The company prohibits deductions from the salary of a salaried-exempt employee based on the quality or quantity of work performed or any other reason that is inconsistent with pay on a salary basis under federal wage and hour regulations. Subject to certain exceptions, a salaried-exempt employee must receive his or her full salary for any week in which he or she performs any work without regard to the number of days or hours worked. Exceptions to this general rule include the following:

1. The company need not pay the salary of a salaried-exempt employee for any workweek in which the employee performs no work.
2. The company may make deductions from salary for an exempt employee's absence for one or more full days for personal reasons, other than sickness or disability.
3. The company may make deductions from salary for absences of one or more full days occasioned by sickness or disability so long as the company maintains a bona fide leave plan that provides compensation for loss of pay occasioned by such sickness or disability. (Deductions for such full day absences may be made, for instance, before the employee has qualified under the plan or after the employee has exhausted his or her leave under the plan.)
4. The company will not make deductions from salary for absences of an exempt employee occasioned by jury duty, attendance as a witness, or temporary military leave. The company can offset any amounts received by an employee as jury fees, witness fees, or military pay for a particular week against the salary due for that particular week.
5. The company may make deductions from the salary of exempt employees for penalties imposed in good faith for infractions of safety rules of major significance.
6. The company may make deductions from the salary of exempt employees for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules.
7. The company is not required to pay the full salary of a salaried-exempt employee in the initial or terminal week of his or her employment if the employee works a partial week during such week.
8. The company is not required to pay the full salary of a salaried-exempt employee for weeks in which an exempt employee takes unpaid leave under the Family Medical Leave Act.

If a salaried-exempt employee believes that the company has made an improper deduction from his or her salary, he or she should report the alleged improper deduction to\_\_\_\_\_. An employee may also report an improper salary deduction by\_\_\_\_\_. The company will in no way retaliate against any employee for making a good faith complaint about any payroll discrepancies or problems.

## 4. Know What Your Employees are Doing Before They Clock In and After They Clock Out



## **“Donning/Doffing” Basics – the Buzzwords**

- **Work**
- **Principal activity**
- **Preliminary or postliminary activity**
- **Integral and indispensable**
- **De minimis**
- **Continuous workday**

## **“Donning/Doffing” Basics – the Buzzwords**

- **Putting on and taking off required gear is a principal activity if the nature of the job mandates that it take place on the employer’s premises**
- **Time spent after engaging in the first principal activity/before engaging in the last one is compensable**



## **5. Remove Incentives for Your Managers to Work Employees Off the Clock**

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## **6. Beware the Payroll Deduction, such as:**

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- **Variations in the quality or quantity of work performed**
- **Partial day absences (unless the absences are pursuant to the FMLA)**

## **Permissible Deductions**

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- **Deductions that reflect a proportionate part of an employee's full salary for time actually worked in the first and last weeks of employment**
- **Deductions for penalties imposed in good faith for violating safety rules of "major significance"**
- **A workweek in which the employee performs no work.**

## **More Permissible Deductions**

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- **Deductions for absences from work for one or more full days for personal reasons, other than sickness or disability**
- **Deductions for absences from work for one or more full days due to sickness or disability if the deductions are made pursuant to a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences**

## More Permissible Deductions

- Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of workplace conduct rules
- Deductions for leave taken pursuant to the Family and Medical Leave Act

## The Exemptions – A Quick Review



## **The “White Collar” Exemptions**

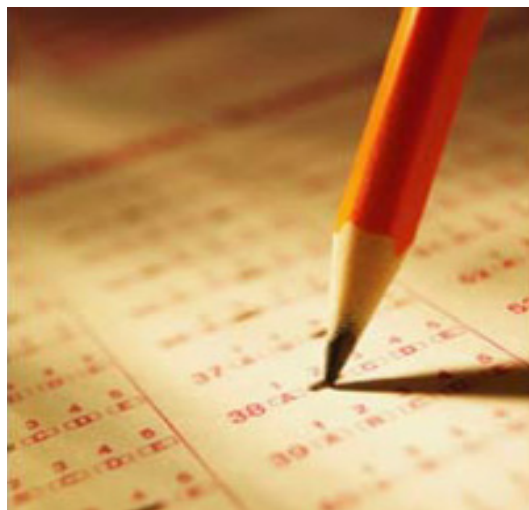
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- **Executive**
- **Administrative**
- **Professional**
- **Outside salespersons**
- **Computer-related professions**

## **The Two-Part Test**

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- **Salary basis**
- **Job duties**



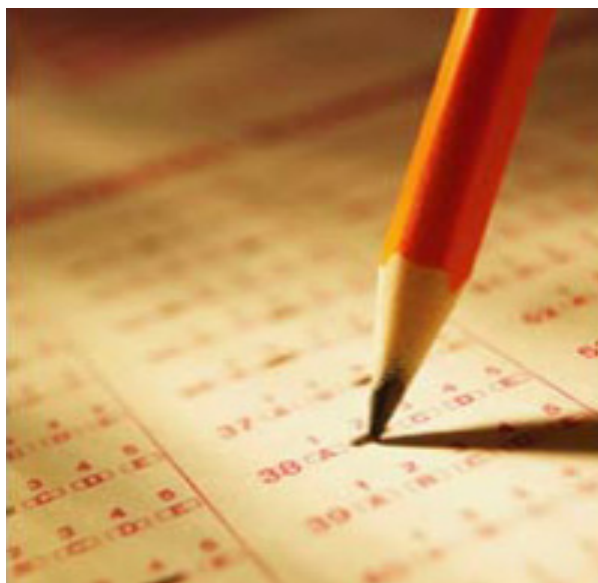
## **The Salary Basis Test**

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- **Minimum salary level required for exemption is \$455.00 per week (\$23,660 per year).**
- **With certain exceptions, a salary must not be “subject to” deductions.**

## **The Duties Tests**

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### **Executive employee:**

- **Primary duty is management of the enterprise or of a customarily recognized department or subdivision;**
- **Customarily and regularly directs work of two or more other employees; and**
- **Authority to hire/fire or suggestions/recommendations afforded great weight**

### **Administrative employee:**

#### **Administrative Duty**

- **Primary duty is performance of office or non-manual work directly related to management or general business operations of employer or employer's customers; and**
- **Exercise of discretion and independent judgment on matters of significance.**

## **Human Resource Example**

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- **Human resource managers who formulate, interpret, or implement employment policies generally meet requirements.**
- **Personnel clerks who “screen” applicants to obtain data regarding minimum qualifications and fitness for employment generally do not.**

## **Learned Professional**

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- **Primary duty is performance of work requiring advanced knowledge**
- **Field of science or learning**
- **Customarily acquired by prolonged course of specialized intellectual instruction**

### **Outside Salesperson:**

- **Must make sales or obtain orders or contracts for services or for the use of facilities**
- **Must be customarily and regularly engaged away from employer's place or places of business when making sales or obtaining orders or contracts.**

### **Computer Employee:**

- **Salary basis, fee basis, or make at least \$27.63 an hour; and**
- **Primary duties consist of:**
  - **Application of system analysis techniques/procedures;**

## Computer Employee:

### And...

- Design, development, documentation, analysis, creation, testing or modification of computer systems/programs (inc. prototypes)
  - based on and related to user or system design specifications; or
  - related to machine operating systems; or
- A combination of all these duties.

## 7. Don't Rely on Job Descriptions

- Look not at what the description *says* the employee does but at what the employee *actually* does on a daily basis



## 8. Employee Preference Doesn't Matter



## 9. Industry Custom and History Don't Matter



*Doing something the wrong way for a long time  
doesn't make it right.*

## **10. Know a Good Wage & Hour Lawyer**

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