



Are employers able to reduce an exempt employee's salary due to the business impact of the coronavirus?

As a cost-saving measure during the COVID-19 pandemic, some employers are considering reducing exempt employee pay with or without a corresponding reduction in hours worked. Under the Fair Labor Standards Act (FLSA), employers are generally permitted to make a prospective reduction in an exempt employee's salary that is not related to the quality or quantity of the work performed.

A reduction in an exempt employee's pay without a change in work hours is permitted as long as the change is prospective, without discrimination, and the minimum salary requirement is still met (currently \$684 per week under the FLSA although state requirements may be higher).

When reducing salary due to a reduction in hours worked, the U.S. Department of Labor (DOL) has previously issued guidance (<https://www.dol.gov/whd/regs/compliance/whdfs70.htm>) for employers facing economic challenges due to circumstances such as the current pandemic. The guidance indicates the following:

An employer is not prohibited from prospectively reducing the predetermined salary amount to be paid regularly to a Part 541 exempt employee during a business or economic slowdown, provided the change is bona fide and not used as a device to evade the salary basis requirements. Such a predetermined regular salary reduction, not related to the quantity or quality of work performed, will not result in loss of the exemption, as long as the employee still receives on a salary basis at least \$684 per week. On the other hand, deductions from predetermined pay occasioned by day-to-day or week-to-week determinations of the operating requirements of the business constitute impermissible deductions from the predetermined salary and would result in loss of the exemption. The difference is that the first instance involves a prospective reduction in the predetermined pay to reflect the long term business needs, rather than a short-term, day-to-day or week-to-week deduction from the fixed salary for absences from scheduled work occasioned by the employer or its business operations.*

Unfortunately, the DOL guidance does not state how long the change in hours and pay must last to be considered bona fide. Therefore, employers should consult with an attorney and also seek guidance on related state law before implementing such practices.

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