

What's New

August 2004

New FLSA White Collar Exemption Rules Offers Incentives to Employers

The revised Fair Labor Standards Act (“FLSA”) regulations, which take effect on August 23, 2004, gives incentives to employers to amend their company policies to: (1) reflect that employees may receive unpaid suspensions as discipline for violating workplace conduct policies; and (2) emphasize the company’s prohibition of improper pay deductions and explain the complaint procedure for reporting improper deductions. Such revisions to company policies will allow employers to take advantage of opportunities to: (1) make full-day deductions for violations of workplace conduct rules; and (2) avoid penalties of improper deductions through the regulations’ safe harbor provisions.

Full-Day Deductions for Violating Workplace Conduct Rules

In general, to avoid destroying an employee’s “exempt” status, an employer must pay an employee for the entire week if the employee worked any part of that week. Because of this general rule, prior to the amended regulations, employers could not discipline an employee with unpaid suspensions in less than whole-week increments when an employee violated a workplace conduct rule (other than safety rules of a major significance) such as an employer’s sexual harassment or workplace violence policy. This resulted in employers sometimes disciplining a salaried exempt employee more harshly than it would a non-exempt employee for the same policy violation (i.e., the exempt employee would receive an unpaid suspension for a whole week while the non-exempt employee would receive an unpaid suspension for two days).

The amended regulations, however, revised the law to allow for full-day deductions as discipline for workplace conduct rule infractions. Employers may only take advantage of this new rule if the workplace conduct rules are in writing, applicable to all employees, and specific enough to put employees on notice that they may be subject to unpaid disciplinary suspensions.

Safe Harbor for Improper Deductions

The Department of Labor also created new safe harbor provisions in the revised regulations. Under the amended rules, an employer may escape liability for improper pay deductions, even when an employer has an actual practice of prohibited deductions, if the employer took the following steps: (1) clearly communicated a policy prohibiting improper pay deductions and providing a complaint mechanism; (2) reimbursed employees for any improper pay deductions; and (3) made a good faith commitment to comply with the rules in the future.

White Collar Exemptions from Overtime and Minimum Wage

The amended rules make the first significant modifications to the white collar exemptions rules from overtime and minimum wage requirements for over 50 years. The most important of these exemptions are summarized in [Chapter 3: Wage and Hour Law](#) in the Seventh Edition ©2004 of *The Chamber Desk Manual: Labor and Employment Law for Hawaii Employers*.