The Legality of Docking the Pay of Urgent Care Employees

Urgent Message: While legal under circumstances outlined by federal and state law, docking employee pay for violating an employer's policies may be viewed as demoralizing and unethical versus punitive actions like warnings or suspension.

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Workers frequently make mistakes on the job. Some are mere oversights that are quickly corrected, while others are significant, negatively impacting the bottom line of the business. When mistakes happen, urgent care operators may wonder if they can dock the pay of exempt and non-exempt employees and under what circumstances.

The article will provide an overview of the situations where docking pay is legal for exempt and non-exempt employees.

What is the Fair Labor Standards Act?

Understanding the appropriateness of employee wage docking requires knowledge of state and federal laws about pay.[1] First, the Fair Labor Standards Act (FLSA) governs wage and hour laws, and the law dictates the federal minimum wage, the number of hours employees can work before receiving overtime, and other requirements about the payment of wages.[2]

The FLSA applies broadly enough to cover nearly all businesses, including urgent care centers. But note that some workers are not covered by the FLSA, even if their employer is. The difference has to do with the workers' payment.[3] The FLSA doesn't cover what are considered "exempt" employees.

An employee is considered exempt if they:

- Receive more than at least twice the minimum wage for full-time employment;
- Are paid on a salary basis; and
- Perform "exempt" job duties (eg, executive, administrative, professional).

However, the FLSA applies for "nonexempt" employees who:

- Are paid hourly;
- Have limited ability for self-supervision; and
- Make less than twice the minimum wage for full-time employment.

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Illegal or Unethical?

Pay deductions can negatively impact employee morale and motivation, particularly if a policy is not applied consistently across all employees and an employee is not given a clear explanation for the deduction. The losses to an organization of poor morale—including distrust of management, damaged reputation in the community, increased turnover and reduced service levels—may be more costly to a business in the long-run than whatever cash it could recover from docking pay. Albeit legal, docking an employee's pay may be perceived as unethical unless it's done in very specific situations, such as when an employee has clearly and deliberately violated a written company policy, caused significant damage to property, or is habitually taking unauthorized time off. Even then, it should be done with transparency, following proper disciplinary procedures. In most cases, other disciplinary actions like warnings or suspension might be more appropriate than directly reducing pay.

In addition, a nonexempt employee must be paid overtime as defined by the FLSA for all hours over 40 hours of work per week.[4]

Docking Exempt Salaried Employees

An exempt employee's salary, as defined by the FLSA, must be paid in full if *any* work is performed during the workweek. As such, an employer can't, for example, arbitrarily deduct an hour's pay for an employee showing up an hour late or taking time for medical appointments. Note that if an urgent care operator improperly docks pay of a salaried employee, the employer would be subject to overtime pay, back taxes, and penalties.[5]

Thus, a salaried employee who works more than 40 hours in a week is also exempt from earning overtime because exempt status entitles that individual to a set pay rate, no matter the number of hours the individual works.

Specific Circumstances in Which an Employer Can Dock an Exempt Employee's Pay

Under the FLSA, employers can reduce an exempt employee's salary only in specific circumstances, which include the following:

- When an employee is absent from work for 1 or more full days for personal reasons other than sickness or disability
- For absences of 1 or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for salary lost due to illness
- To offset amounts employees receive as jury or witness fees or for temporary military duty pay
- For penalties imposed in good faith for infractions of safety rules of major significance
- For unpaid disciplinary suspensions of 1 or more full days imposed in good faith for workplace conduct rule infractions
- In the employee's initial or terminal week of employment if the employee does not work the full week
- For unpaid leave taken by the employee under the Federal Family and Medical Leave Act[6]

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Reducing exempt employees' pay is only allowed for full-day absences for the reasons listed. Beyond these specific instances, pay docking is generally not permissible.[7]

Docking Non-Exempt Employees

Non-exempt employees are typically paid on an hourly basis. As a result, if a non-exempt employee has depleted their paid time off and needs either a full or partial day off, employers need not pay them for the time away from work.

In the case of illness, employers must make certain that employees have used up paid sick time for the absence, if applicable, before docking pay. Employers should also have a clearly written policy that states how missed time is handled for non-exempt employees when they have used all of their paid time off.[8]

Other Situations

Under federal law, employers may deduct the cost of a uniform, and employers may require employees to pay for tools and equipment—but only if the employee's pay after deductions is at least equal to the minimum wage.[9] Some states allow docking for damage to property, cash shortages, returned checks, etc. with a signed consent.[10]

For example, Oregon employers may require employees to pay for their work tools if the employee earns more than the minimum wage. However, Oregon employers may not achieve this by withholding money from the employee's paycheck. In contrast, in California, employers must provide all tools and equipment necessary to perform the job, and the employees cannot be required to pay anything for them.[11]

Under federal law, employers can charge the employee for items they break or for shortages in their cash register drawers, provided the employee is still earning at least the minimum wage.[12]

Liability for Adverse Employment Actions

Urgent care operators should bear in mind that Title VII of the Civil Rights Act of 1964 prohibits discrimination in any aspect of employment, including compensation, based on race, color, sex (including sexual orientation, gender identity, and pregnancy), religion, or national origin, while the Americans with Disabilities Act prohibits discrimination on the basis of disability.[13] Additionally, Title VII prohibits retaliation that produces injury or harm against employees who complain of discrimination, file a formal charge of discrimination, or who testify in an investigation or lawsuit involving discrimination. Many state laws also protect those who have filed workers compensation claims.[14]

A policy of docking pay may be legal, but if it targets a protected class, it may cross the line into discrimination. For instance, if female employees are consistently docked for arriving late but their male colleagues are not, the practice may be considered discriminatory.

To show that the retaliation produced injury or harm, an employee must demonstrate that "a reasonable employee would have found the challenged action materially adverse."[15] The adverse action must "amount to a significant change in employment status, such as firing, failing to promote, reassignment with significantly different responsibilities*, or a decision causing a significant change in benefits.*"[16] Ultimately, almost every adverse action affects pay.

Summary

Remember that exempt employees are hired to do the job and not to work specific hours. Federal employment law provides a number of exceptions for docking pay based on the category of employee. Urgent care operators should understand that job title alone isn't adequate to establish exempt status, which determines whether the salary basis exemptions apply. Again, federal law and the application of state wage and hour laws may differ. ■

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