



## ADMINISTRATIVE POLICY

### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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**TITLE: QUESTIONS AND ANSWERS  
ABOUT SALARY BASIS**

**NUMBER: ES.A.9.1**

**CHAPTER: RCW [49.46.010](#)(5)(c)  
RCW [49.46.130](#)(2)(a)  
WAC 296-128-500 through 533**

**SEE ALSO: [ES.A.9.2](#)  
[ES.A.9.3](#), [ES.A.9.4](#),  
[ES.A.9.5](#), [ES.A.9.6](#),  
[ES.A.9.7](#)**

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### Question and Answer Fact Sheet

This document addresses questions on the salary basis regulation for bona fide executive, administrative, and professional workers exempt from the Washington State Minimum Wage and Overtime Law, [RCW 49.46.010 \(3\)\(c\)](#) and [RCW 49.46.130 \(2\)\(a\)](#). The definitions for each of these exemptions are in [WAC 296-128-510](#), [WAC 296-128-520](#), and [WAC 296-128-530](#). The effective date of the salary basis regulations, [WAC 296-128-500](#), [WAC 296-128-532](#) and [WAC 296-128-533](#), is February 21, 2003.

Only those employees who meet the definition of executive, administrative, or professional and who are paid on a salary basis are considered “exempt” employees. The salary basis regulation does not cover employees who are paid on a salary basis but do not meet the definition of an executive, administrative, or professional.

There are some differences for public sector employees, which are outlined in [WAC 296-128-533](#). “Employer” generally includes all public and private employers; the differences are addressed in questions 21 through 24.

**1. What does salary basis mean?**

Salary is where an employee regularly receives for each pay period of one week or longer a predetermined monetary amount (salary) consisting of all or part of his or her compensation. The salary shall not be subject to deductions because of variations in the quantity or quality of the work performed, except as provided in the regulation. The salary amount cannot be less than the amount required in [WAC 296-128-510](#), [WAC 296-128-520](#), and [WAC 296-128-530](#). The pay period cannot exceed one month.

**2. Are employers required to pay additional compensation to exempt employees for overtime hours worked?**

No. The minimum wage and overtime laws do not require overtime pay or compensatory time to exempt employees. However, employees and employers may negotiate agreements for additional pay or compensatory time or other compensation in addition to the salary.

**3. If exempt employees receive a bonus for working over 40 hours in a workweek, does this affect the salary basis?**

No. The overtime law provides that the payment of compensation or a provision for compensatory time off in addition to a salary does not destroy the salary basis. See No. 2.

**4. If a company shuts down for one week due to lack of work and none of the salaried employees receive payment, does this destroy the salary basis?**

No. Payment of salary is not required in particular weeks in which an employee or employees perform no work regardless of the circumstances. This includes weeks in which a holiday or holidays or vacation days occur and the company shuts down for the remaining days in that week.

**5. If the company shuts down for a partial week without paying the salaried exempt workers for the full week, does this destroy the salary basis?**

Yes. If the company shuts down for a partial week, exempt employees must be paid their full salary for that week when they work any part of that week.

**6. If an employee requests a day off work, may the employer deduct the pay for the whole day from the employee's salary?**

Yes. When the employee takes a full day off for personal reasons other than sickness or accident, deductions are permitted in full-day increments.

**7. If an employee requests a half-day off, may the employer deduct the pay for the half day from the employee's salary?**

For private sector employees, no. Deductions from pay for partial day absences are not permitted except for very limited circumstances allowed in the [Federal Family and Medical Leave Act](#). Public sector employers may make deductions from salary for partial day absences under certain circumstances, as discussed in question No. 22 below.

**8. Are partial day deductions from pay permitted by employers when the time off is taken under the [federal Family and Medical Leave Act](#)?**

Yes. Deductions can be made in partial day increments if it is leave that is taken under the federal Family and Medical Leave Act. Employers are advised to seek advice from the U.S. Department of Labor (USDOL) to ensure compliance with FMLA requirements. The toll-free number to the USDOL is 1-866-487-9243.

**9. Are deductions permitted from pay for disciplinary absences due to major safety violations or serious employee misconduct?**

Yes. Deductions are allowed for disciplinary absences that are imposed for violations of safety rules of major significance. Major significance includes only those relating to prevention of serious danger to the plant, the public, or other employees. An example might be violating rules prohibiting smoking in an explosives plant or around hazardous or other flammable material.

**10. If an employee has not yet qualified under the employer's plan, or has exhausted all of his or her sick leave bank, may the employer deduct the whole day from the employee's salary?**

Yes. The employer's written plan, policy, or practice must include conditions under which the leave is granted. If the employee has not yet qualified under the plan or has exhausted all of his or her sick leave, the employer may then deduct pay in full-day increments from employees who have not yet qualified under the plan, or in full-day increments after an employee's sick leave bank is exhausted.

**11. If an employee takes a partial day off due to sickness, and the employee's sick leave bank is exhausted, may the employer deduct the partial day absence?**

For private sector employees, no. The employer cannot deduct from pay for a partial day's absence for use of sick leave even when the sick leave has been exhausted. Public sector employers may make deductions from salary for partial day absences under certain circumstances as discussed in question No. 22 below.

**12. If the employee takes a sick day off but the employer does not provide sick leave, may the employer deduct for the whole day?**

No. The employer cannot deduct for sickness or accident when there is no bona fide policy in effect. An employer's written policy that "there is no policy" is not a bona fide sick leave policy.

**13. May an employer make deductions from pay for absences due to jury duty or military duty less than a whole week?**

No. The employer cannot deduct when the employee participates in jury duty, attendance as a witness, or temporary military leave if the employee performs any work in that week. The employer may offset any amounts received by the employee as a jury member or witness fees, or military pay. Payment is not required for weeks in which the employee performs no work in the entire week, regardless of circumstances.

**14. What is a bona fide leave bank?**

A bona fide leave bank is a benefit provided to employees in the case of absence from work due to sickness or personal time off (PTO), including vacation time. The benefit plan must be in writing and be contained in a contract or an agreement, or in a written policy that is distributed to the employees. If the plan is used as a subterfuge to circumvent or evade the requirements of this regulation, it is not bona fide.

**15. If an employee requests a day off work, may the employer deduct from the leave bank for the whole day?**

Yes. The employer can deduct from the leave bank in full-day increments provided there is a bona fide plan as described in question No. 14.

**16. When an employee requests a half-day off work, may the employer deduct from the leave bank for the half-day?**

Yes. The employer can deduct from the leave bank for partial-day increments provided there is a bona fide written plan as described in question No. 14.

**17. May an employer make leave bank deductions for less than one hour?**

For private sector employees, no. Leave bank deductions may not be made for less than one full hour. If the absence is for at least a full hour, it may then also be taken in additional increments of less than one hour thereafter. For example, an employer may not deduct 45 minutes from a leave bank, but could deduct 75 minutes if the employee took that amount of leave. Public sector employers may deduct from leave banks in any increment, as discussed in question No. 22 below.

**18. May an employer promptly correct a mistaken deduction without destroying the salary basis?**

Yes, provided the deduction is infrequent and inadvertent. A limited window of correction may be permitted if the employer immediately begins taking corrective steps to promptly resolve the improper deduction brought to the attention of the employer or other appropriate representative of the employer.

**19. May an employer prorate the salary for the first and final weeks of employment?**

Yes. The salary can be prorated for the actual days worked in the first and final weeks of employment.

**20. Does the Salary Basis Regulation apply to employer actions prior to February 21, 2003?**

No. [WAC 296-128-500](#), [WAC 296-128-532](#) and [WAC 296-128-533](#) apply to the payment of a salary and deductions from salary on and after February 21, 2003, which is the effective date of this rule.

**Public Employees**

**21. Who are public employees?**

Public employees are defined in the salary basis regulation as “an employee directly employed by a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision or other public agency and includes any department, bureau, office, board, commission or institution of such public entities”. Most of the salary basis provisions for private employees apply to public employees. However, there are some differences, as addressed in the following questions.

**22. May public employees take off a partial day off without pay without destroying the salary basis?**

Yes. A public employer may deduct for partial day absences in any increment when the pay system is established according to principles of public accountability, under which the public employee accrues sick or personal leave and permits leave without pay for absences of personal reasons or illness or injury of less than one day when accrued leave is not taken.

**23. May a public employer furlough employees for budget reasons?**

Yes. The salary basis exemption would be lost for the week in which the furlough occurred and all requirements of the minimum wage and overtime act apply, if the employees performed any work during the week. Payment is not required for weeks in which the employee performs no work in the entire week, regardless of circumstances.

**24. May a public employer deduct from leave banks in any increment?**

Yes.