

The Ultimate Backup

A Client News Bulletin

RAINS, LUCIA & WILKINSON LLP

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NEW DISCIPLINE RULES FOR FLSA EXEMPT EMPLOYEES

By Alison Berry Wilkinson

The United States Department of Labor recently gave employers more flexibility in disciplining FLSA-exempt workers through salary deductions. Employers may now suspend exempt salaried employees for one or more full workdays for serious workplace misconduct without violating the employees' salaried status. Prior to this rule revision, employers could not suspend exempt salaried employees without pay for less than a full workweek.

These new rules allow an employer to dock an exempt employees' wages on a day-to-day basis for violations of "workplace conduct" that are outlined in a written policy applicable to all employees. For example, an employer would be able to suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment or for violating a generally applicable written policy prohibiting workplace violence.

Notably, the "workplace conduct" discipline rule was defined to encompass serious misconduct such as sexual harassment, drug or alcohol abuse, or a violation of state or federal law. This rule does not allow for salary deductions for reasons relating to employee attendance or performance.

The Department of Labor implemented the change because it would "permit employers to hold exempt employees to the same standards of conduct as that required of their nonexempt workforce", while at the same time avoiding overly harsh treatment of exempt employees by imposing a full-week suspension where a shorter one would be more appropriate.

Author's Note: *Alison Berry Wilkinson is the managing partner of Rains, Lucia & Wilkinson LLP, a law firm that almost exclusively represents public safety employees in collective bargaining, as well as administrative discipline, criminal and civil litigation. Alison has extensive experience resolving and/or litigating Fair Labor Standards Act claims against public agencies throughout California.*

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