

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
BUREAU OF HUMAN RESOURCES

April 5, 2005

**HUMAN RESOURCES MEMORANDUM 5-05**

TO: All Employees, Agency Department Heads, Human Resource  
Representatives

***SUBJECT: FLSA SALARY BASIS POLICY***

**SALARY BASIS POLICY**

The Fair Labor Standards Act (FLSA) is a federal law that requires most employers in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, and professional employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the U.S. and Maine Department of Labor regulations.

**SALARY BASIS REQUIREMENT**

To qualify for exemption, employees generally must be paid not less than \$455 per week on a salary basis. These salary requirements do not apply to teachers and employees practicing law or medicine. Exempt computer employees may be paid at least \$455 on a salary basis or on an hourly basis at a rate not less than \$27.63 an hour.

Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions for an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a "salary basis." If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

Maine law (26 MRSA, § 662), and the regulations pertaining thereto, define these exemptions and the salary basis requirement under State law. (Under current Maine law, the salary basis requirement does not meet the federal minimum.) In the event of a conflict, the rate most favorable to the employee prevails.

## CIRCUMSTANCES IN WHICH THE EMPLOYER MAY MAKE DEDUCTIONS FROM PAY

Deductions from pay for exempt State employees are permissible when an exempt State employee: is absent from work for personal reasons other than sickness or disability; for absences 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 military pay; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. Also, an employer is not required to pay the full salary in the initial or terminal week of employment; for penalties imposed in good faith for infractions of safety rules of major significance, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act, voluntary leave without pay, or for absences due to budget-required furloughs. In these circumstances, either partial-day or full-day deductions may be made.

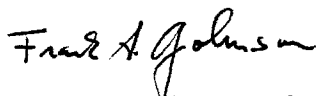
## STATE POLICY

It is the State's policy to comply with the salary basis requirements of the FLSA and Maine law. Therefore, all managers are prohibited from making any improper deduction from the salaries of exempt employees. The State, as an employer, wants employees to be aware of this policy and that the State of Maine does not allow deductions that violate the FLSA or Maine law.

## WHAT TO DO IF AN IMPROPER DEDUCTION OCCURS

If you believe that an improper deduction has been made to your salary, you should immediately report this information to your direct supervisor, or to your agency human resource representative, or to the Director, Bureau of Human Resources.

Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, you will be promptly reimbursed for any improper deduction made.



Frank A. Johnson, Acting Director  
Bureau of Human Resources

FAJ/pjs