



# Assessing The Risk:

## Wage and Hour Tip Of The Week

### Full-day Deductions Are Out of Whack With the Fluctuating Workweek

The attorneys in Seyfarth Shaw's Wage & Hour Litigation Practice Group provide the following tip to help ensure your good faith compliance with state and federal wage and hour laws:

Not many employers still pay employees under the so-called fluctuating workweek method for calculating overtime. That method allows an employer to pay a fixed salary for fluctuating hours, and half of an employee's regular rate for overtime hours. If you're still paying according to this entirely lawful pay method, you know who you are! One requirement that must be met to pay lawfully under this method is that an employee receive a fixed salary that does not vary with the number of hours worked during the week, whether many or few. This means that you can't reduce the employee's pay when she misses work -- not for an hour and not for a full day. This is different from what the FLSA's executive, administrative, and professional exemptions allow. Those exemptions allow a full-day deduction to be taken for absences occasioned by personal illness or leave. The exempt employee will continue to be paid on a "salary basis" under those exemptions' tests even if a full-day deduction is taken from the employee's salary. It's different for employees paid according to the fluctuating workweek method. Although there are exceptions, employers should, as a general matter, not make deductions to the salary of any fluctuating workweek-paid employee for missed work.

*Disclaimer: The above are "best practice" suggestions and are in no way meant either to guarantee that use of them creates a litigation risk-free environment or, alternatively, to suggest that any specific practice or policy maintained by an employer violates the law or is indefensible in litigation.*

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