

FAIR LABOR STANDARDS ACT SAFE HARBOR POLICY

(Prohibition of improper deductions from the salaries of exempt employees)

The Fair Labor Standards Act (FLSA) is a federal law which requires that most employees 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, professional and outside sales 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 Department's regulations.

Salary Basis Requirement

To qualify for exemption, employees generally must be paid at not less than \$455 per week on a salary basis. These salary requirements do not apply to outside sales employees, 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. (Part time positions may be classified as "exempt" even when the position does not earn \$455 per week).

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 from 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.

Circumstances in Which the Employer May Make Deductions from Pay:

Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one 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 (paid sick leave); 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 (see town policy on "Progressive Discipline" regarding suspension without pay). Also, an employer is not required to pay the full salary in the initial or terminal week of employment; or for weeks in which an exempt employee takes unpaid

leave under the Family and Medical Leave Act or the Small Necessities Leave Act. In these circumstances, either partial day or full day deductions may be made.

Town of Wilbraham Policy

It is the town's policy to comply with the salary basis requirements of the FLSA. Therefore, the town prohibits all town managers, supervisors or elected and appointed officials from making any improper deductions from the salaries of exempt employees. The town wants employees to be aware of this policy. The town does not allow deductions that violate the FLSA. Retaliation against employees who make good-faith reports of improper deductions will not be tolerated.

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 department manager, or to the Town Accountant. If your supervisor and the Town Accountant cannot resolve the issue to your satisfaction, you may file a complaint with the Town Administrator/Assistant Town Administrator. Please submit at a minimum the following information: amount deducted, pay period, and why you think the deduction was improper. Employees are encouraged to use the form attached to this policy. (The form is readily available in the Selectmen's Office).

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.

ADOPTED: Personnel Board 10/20/04, Labor Counsel 11/3/04, Board of Selectmen 9/11/2006
AMENDED:
ATTACHMENT: Report Form, Acknowledgement of Receipt
FORM:

The terms of collective bargaining agreements supercede any provisions of any personnel policies the town establishes. If a collective bargaining agreement is silent on a topic or a subject matter within a topic these policies are intended to apply. Where the provision of a collective bargaining agreement between the town and a union conflict with a provision of a town personnel policy, the collective bargaining agreement provision will govern for those employees covered by the agreement.

TOWN OF WILBRAHAM

REPORT OF IMPROPER PAY DEDUCTIONS

Please complete and give to your direct supervisor/department head (who signs your payroll), or directly to the Town Accountant:

NAME _____

TITLE _____

DEPARTMENT _____

IMMEDIATE SUPERVISOR _____

PAY PERIOD(S) FOR WHICH REVIEW IS REQUESTED:

FROM: _____

TO: _____

CHECKDATE: _____

PLEASE EXPLAIN WHAT OCCURRED AND WHY YOU BELIEVE IT WAS IMPROPER

Employee Signature: _____

Date: _____

SUPERVISOR FINDING:

Correction **was made** on _____

Explanation: _____

Correction **was not made**

Explanation: _____

Supervisor/Department Head

Signature: _____

TOWN ACCOUNTANT FINDING:

Correction **was made** on _____

Explanation: _____

 Correction **was not made**
Explanation: _____

Town Accountant Signature: _____

Town of Wilbraham

NOTICE AND
ACKNOWLEDGEMENT OF RECEIPT

FAIR LABOR STANDARDS ACT
SAFE HARBOR POLICY

(Prohibition of improper deductions from the salaries of exempt employees)

I, _____(printed name of employee) hereby acknowledge that I have been given a copy of the Town of Wilbraham's policy on the Fair Labor Standards Act Safe Harbor Policy which prohibits improper deductions from the salaries of exempt employees. I understand that I have the right to file a complaint alleging an improper salary deduction.

(Signature of employee)

(Date)

