

HR QUESTION ? of the month



Can you pro-rate pay for an exempt employee, who worked a partial week upon separation?

Question: We have an exempt employee that separated in the middle of a workweek. We prorated his salary that week to reflect only the days he worked. He is coming back now stating that he had worked 40 hours that week before he left. Does that have any bearing on the pay, or are we ok with leaving it as is?

Response: Exempt employees generally must be paid their full weekly salary for all workweeks in which they perform any work. There are, however, certain limitation exceptions to this rule. Specifically, if an exempt employee starts or ends employment mid-workweek, the employer may prorate the employee's salary accordingly. As for calculating the deduction, the Fair Labor Standards Act (FLSA) does not mandate one specific method for prorating an exempt employee's salary in situations where deductions are permitted. Rather, 29 C.F.R. § 541.602(c) says that an employer may "use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee." Thus, there are a number of methods the employer may utilize. To that end, it is certainly permissible for an employer to calculate a day rate and then multiply by the actual number of days worked, regardless of the number of hours actually worked. In other words, the number of hours do not have any bearing on the pay if the method you used to prorate the employee's salary was the daily (rather than hourly) equivalent of the employee's full weekly salary. For the full text of the statute, please see <http://www.gpo.gov/fdsys/pkg/CFR-2012-title29-vol3/pdf/CFR-2012-title29-vol3-sec541-602.pdf>

© 2014 Advisors Law Group, All Rights Reserved

To learn more about the [Federated Employment Practices NetworkSM](#), contact your local [Federated Marketing Representative](#), or visit www.federatedinsurance.com.

POWERED BY
enquiron[™]
Questions become answers.™

The "HR Express Update" is provided by Enquiron®, a company wholly independent from Federated Insurance. Federated provides its clients access to this information through the Federated Employment Practices NetworkSM with the understanding that neither Federated nor its employees provide legal or employment advice. As such, Federated does not warrant the accuracy, adequacy, or completeness of the information herein. This information may be subject to restrictions and regulations in your state. Consult with your independent professional advisors regarding your specific facts and circumstances.