

How Does A Business Pay A Manager Who Is Injured On-The-Job?
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My business has a manager who is a salaried exempt employee. While driving the company vehicle on a business trip she suffered an on-the-job injury. She filed a workers' compensation claim which was accepted by our insurance company. Today she presented a doctor's note from her attending physician who released her to work four hours per day performing her managerial duties. Our workers' compensation insurance company will be paying time loss for the four hours she is unable to work. Is my business legally allowed to just pay her four hours of compensation for partial day absences?

Under the Fair Labor Standards Act and Oregon Minimum Wage Law, a manager who meets the "salary basis" and "duties" tests is exempt from the minimum wage and overtime requirements. Executives, managers and supervisors in this category are commonly known as "white collar" employees (even if they wear a blue shirt or a blouse).

An exempt employee must receive a pre-determined amount which is not subject to reduction because of variations in the quality or quantity of work. See 29 CFR 541.602(a) and OAR 839-020-0004(29). The general rule requires full salary for weeks in which any work is performed and no salary for weeks in which no work is performed. This rule is subject to certain exceptions. See 29 CFR 541.602(b) and OAR 839-020-0004(30). (We will discuss the topic of salary reduction of a public-sector employee in a separate column.) The answer to your question is: "Under wage and hour laws, your business is not legally allowed to reduce the manager's salary for partial day absences." Furthermore, under Oregon Injured Workers Laws an employer is prohibited from discriminating against an injured worker in any term or condition of employment because the worker has applied for benefits. See ORS 659A.040. Reducing a manager's salary while she has invoked the workers' compensation system could be construed as discrimination based on her injured worker status.

Your company may want to report the salary amount that it pays the exempt employee to the workers' compensation insurance company. During any period of temporary PARTIAL disability (i.e. the worker has been released to any form or amount of work), the worker's temporary disability benefits would be offset by wages received. For an exempt, salaried worker being paid full salary, that would likely mean no disability would be due. The temporary partial disability is fully offset by the salary. The workers' compensation definition of "wages" is broad, thus, the insurer would not be required to use only the pay for the half-time worked in the case cited in the above example. Instead all wages earned should be offset. Put in simple terms, the worker would be entitled to temporary partial disability but the dollar amount would equal zero.

If your company is a covered employer under the federal Family Medical Leave Act (FMLA), the manager's injury meets the definition of a "serious health condition" and she is eligible for FMLA. Federal and state regulations allow reduction in pay for partial day absences when the salaried exempt manager is on leave pursuant to FMLA. See 29 CFR 541.602(b)(7), OAR 839-009-839-020-0004(30) and OAR 839-009-0240(12)(a). Please remember an employee is entitled to up to 12 weeks of protected FMLA leave, meaning the allowable reduction in pay for partial day absences may last up to a maximum of 12 weeks or for the duration when the manager is on FMLA leave.

If your company is NOT a covered employer under the federal Family Medical Leave Act (FMLA) but is covered ONLY under the Oregon Family Leave Act (OFLA), your company will jeopardize the manager's exempt status if it reduces her salary for the partial day absences. See OAR 839-009-0240(12)(b).

If you would like to learn more about Wage and Hour Laws, the Technical Assistance for Employers Program will be conducting seminars on October 25 in Eugene and November 15 in Portland. Please go to the following website <http://egov.oregon.gov/BOLI/> for registration information.