Sample Safe Harbor Policy for FLSA Compliance

By Paul J. Siegel

June 12, 2008

The U.S. Department of Labor’s rules on the “white collar” exemptions from federal overtime and minimum wage requirements under the Fair Labor Standards Act provide a “safe harbor” that may preserve an employee’s exempt status in the event impermissible deductions are made. The rules state that the salary basis component of the exemption test is not lost if the employer:

a. has a “clearly communicated” policy prohibiting improper deductions, including a complaint mechanism;
b. reimburses employees for any improper deductions; and
c. makes a good faith commitment to comply in the future.

This safe harbor is not available, however, if the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

Jackson Lewis is pleased to provide the two sample policies below (one of which is for employees with fluctuating workweeks).

Please note the sample policies are not intended to be legal advice. Any use other than for educational purposes is the sole responsibility of the user. Users should consult legal counsel about the policy language that is appropriate for their individual workplaces.

Sample Safe Harbor Policy

Sample Safe Harbor Policy for Fluctuating Workweeks

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