

---

# CAPLAW

Community Action Program Legal Services, Inc.

---

## Employment Law Q&A

### Question:

May CAAs require exempt employees to record their hours worked or will doing so undermine the salary-basis test for their exemption from the minimum wage and overtime requirements of the federal Fair Labor Standards Act (FLSA)?

### Answer:

Yes, CAAs may require exempt employees to record their hours without risking destruction of the salary basis for their exemption. The preamble to final U.S. Department of Labor (DOL) regulations issued in 2004 confirms that requiring exempt employees to “record and track hours” does not impact their exempt status under the FLSA.<sup>1</sup>

### Analysis:

Generally, FLSA regulations require that, in order to qualify for one of the “white collar” exemptions (i.e., exemption as an executive, administrative, professional, or computer employee), an employee must be paid on a salary basis.<sup>2</sup> This generally means that, subject to some exceptions, “the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.”<sup>3</sup> Essentially, in order for an employee to be considered to be paid on a salary basis, his or her pay must not be reduced based on the number of hours that he or she works, except for certain specific deductions permitted by the regulations.<sup>4</sup>

Some employers have understood that the requirement that exempt employees be paid on a weekly salary basis, rather than for the specific hours worked, means that they should not record the actual hours worked during the week. However, the preamble to the DOL's 2004 final FLSA regulations confirms that employers may require exempt employees to record the amount of time worked without undermining the salary basis of pay for those exempt employees.<sup>5</sup>

Additionally, the Wage and Hour Division of the Department of Labor issued an opinion letter in 2006 which addresses the issue, states that an employer may require exempt employees to record their hours, and makes reference to the 2004 regulations.<sup>6</sup>

### Conclusion:

A CAA may require its exempt employees to keep track of their hours worked as long as it does not base the employees' pay on the time recorded (except for deductions permitted under the FLSA). Thus, for example, CAAs can require exempt employees to record their hours worked for purposes of documenting time and effort spent on government and other grants. In some other cases, it is advisable for exempt employees to keep detailed time records. For example, if the employee is engaging in an activity – such as lobbying – on his or her own time, it will be helpful to have time records showing that the employee was using leave time or a lunch hour while engaging in the activity.

1. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Final Rule, 69 Fed. Reg. 22122, 22178 (April 23, 2004) (amending 29 C.F.R. Part 541); Douglas v. Argo-Tech Corp., 113 F.3d 67, 71 (6th Cir. 1997).
2. 29 C.F.R. Part 541, Subparts B-E, G. While this is not intended to be a complete treatment of exemptions from FLSA, it is important to note that computer employees may be compensated at an hourly rate of \$27.63 and not be required to be compensated on a salary basis.
3. 29 C.F.R. § 541.602.
4. Deductions from salary may be made for several reasons enumerated in the regulations including: absences of one or more full days for personal reasons other than sickness or disability, deductions of one or more full days for reasons of sickness or disability pursuant to a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability, offsets of pay received for military leave, witness attendance, or jury duty (the employer may only offset the pay of the employee for the amount of money received for these outside sources against the salary to be received by the employee for the week), unpaid disciplinary suspensions of one or more full days, unpaid disciplinary suspension for the violation of significant safety rules in any amount, the first and terminal week of employment, and FMLA leave. 29 C.F.R. § 541.602(b).
5. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Final Rule, 69 Fed. Reg. 22122, 22178 (April 23, 2004) (amending 29 C.F.R. Part 541); Douglas v. Argo-Tech Corp., 113 F.3d 67, 71 (6th Cir. 1997).
6. Department of Labor, Wage and Hour Division, Opinion Letter FLSA2006 6 (March 10, 2006) available at [http://www.dol.gov/whd/opinion/FLSA/2006/2006\\_03\\_10\\_06\\_FLSA.htm](http://www.dol.gov/whd/opinion/FLSA/2006/2006_03_10_06_FLSA.htm).