

Safe Harbor and Window of Correction

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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The salary basis regulations include a “window of correction” and a “safe harbor,” both of which permit employers to retain the exempt status of their employees in certain situations involving improper pay docking. “Improper deductions from employee salaries that are either isolated or inadvertent will not result in the loss of the exemption if the employer reimburses the employee for such improper deduction.” 29 C.F.R. § 541.603(c). This is called the “Window of Correction.”

“If an employer has a clearly communicated policy that prohibits improper deductions and a complaint mechanism, reimburses employees for the improper deduction and makes a good faith commitment to comply with the FLSA’s salary basis test in the future, the employer will not lose the exemption unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. DOL refers to this new rule as a “safe harbor” provision.” 29 C.F.R. § 541.603(d).

The safe harbor provision applies regardless of the reasons for the improper pay deduction. The safe harbor is available for both improper deductions made because there is no work available and improper deductions made for reasons other than lack of work. DOL has provided a sample policy to help employers comply with the new salary basis test regulations. The written salary basis policy [1] may be included in the employer’s employee handbook or given directly to exempt employees, but there is no indication in the rules that employees must sign that they have received such a policy.

Links:

[1] https://www.dol.gov/whd/regs/compliance/overtime/modelPolicy_PF.htm

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