

# "Safe Harbor" - Improper or Unlawful Deductions from Pay Under FLSA

Number: E-1

Revision:

Revision Date: 07/01/2017

## 1.0 POLICY

All employees of the Town of Carolina Beach are subject to the provisions of the Fair Labor Standards Act (FLSA). The Town will comply with the salary basis requirements of FLSA by prohibiting all supervisors and managers from making any improper deductions from the salaries of Exempt employees.

## 2.0 PURPOSE

The purpose of this policy is to ensure employees are aware that the Town does not allow deductions that violate the FLSA. This policy is designed to comply with the Department of Labor's policy on the Effect of Improper Deductions From Salary as provided in Title 29 United States Code, Code of Federal Regulations, Part 541 §603d (29CFR §541.603(d)) of the Fair Labor Standards Act (FLSA).

## 3.0 SCOPE

All FLSA Exempt employees of the Town.

## 4.0 DEFINITIONS

- 4.1 **Fair Labor Standards Act** - The Fair Labor Standards Act (FLSA) is a Federal law establishing the minimum wage rate, overtime pay, recordkeeping requirements, prohibiting gender-based wage discrimination between employees performing the same work, and child labor standards affecting full time and part-time workers in the private sector and in Federal, State, and local governments.
- 4.2 **FLSA Exempt Employee** - Employees who are exempt from minimum wage and overtime pay as specified in Section 13(a)(1) of the FLSA. Section 13(a) (1) and Section 13(a) (17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the FLSA regulations.
- 

## 5.0 ORGANIZATIONAL RULES

- 5.1 The Town prohibits deductions from the salary of exempt employees except in the limited circumstances allowed by the Fair Labor Standards Act.
- 5.2 **Circumstances in Which the Employer May Make Deductions from Exempt Employee Pay:**
  - A. Employee is absent from work for one or more full days for personal reasons other than sickness or disability.
  - B. Employee is absent for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness. See **Policy on Sick and Sick Family Leave**.

C. To offset amounts employees receive as jury or witness fees, or for military pay.

D. For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. See **Policy on Corrective Action**

E. For penalties imposed in good faith for infractions of safety rules of major significance. Full or partial days may be charged in this circumstance. See **Policy on Corrective Action**.

F. For weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Full or partial days may be charged in this circumstance. See **Policy on Family and Medical Leave**.

- 5.3 Under FMLA the Town is not required to pay the full salary in the initial or terminal week of employment.
- 5.4 The Town will recover any overpayments made by payroll which were caused by improper recording of time worked or improper data entry. These deductions will be in accordance with the North Carolina State law, Department of Labor and FLSA guidelines as to not violate the minimum wage for non-exempt employees or the FLSA exemption salary test.
  - A. Employees must be notified of the amount of the deduction, the start and end date, and reason for such deduction.
  - B. When the Town conducts audits of departmental records to ensure compliance with FLSA/time-keeping requirements, the Town shall generally apply a three-year statute of limitations when making a 'back pay' remedy in accordance with Department of Labor standards. Likewise, overpayments discovered during FLSA/time-keeping audits conducted by the Town will be subject to a three-year statute of limitations.
  - C. Total overpayments to an employee that are less than \$250.00 are deemed to be "de minimis" and will not be subject to collection.

## **6.0 PROCEDURES**

- 6.1 If an improper deduction occurs, the employee should immediately report the information to his direct supervisor, department timekeeping representative or contact the Human Resources Department.
- 6.2 Reports of improper deductions in employee paychecks will be promptly investigated by the Human Resources staff.
- 6.3 If it is determined that an improper deduction has occurred, the employee will be promptly reimbursed for such improper deduction.

## **7.0 APPENDIX, APPENDICES**

None