Blogs
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The U.S. Court of Appeals for the Third Circuit, in *Higgins v. Bayada Home Health Care Inc*., held that it is not a violation of the Fair Labor Standards Act (FLSA) for an employer to deduct time from an exempt employee's paid time off (PTO) bank for failing to meet a productivity target. The employer in the case had developed a point-based system to ensure that employees met certain "productivity minimums," with various tasks being assigned a certain number of "productivity points." When employees consistently exceeded their productivity minimums, they received additional compensation. When employees failed to meet their weekly productivity minimums, however, their available PTO was deducted. The employer did not deduct from an employee's salary once PTO had been exhausted.

As background, exempt employees under the FLSA are paid on a salary basis and receive a full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Employers cannot make improper deductions from an employee's salary; otherwise, the employee is not considered an FLSA-exempt employee. The Third Circuit held that fringe benefits, which include PTO, are not part of an employee's salary under the FLSA, and, thus, deductions to PTO do not implicate the FLSA's exempt employee requirement that salaried employees be paid their full, predetermined amount each pay period. Essentially, the court found that "[s]o long as the employer does not dock th[e] pre-determined part of the employee's compensation, the employer has satisfied the salary basis test" for the exemption.

Employers utilizing PTO deductions with exempt employees based on productivity targets should contact experienced counsel with questions, including with respect to state law variations.

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