

## **FLSA-318**

August 15, 1972

This is in further reply to your letter of July 20, 1972, concerning the "bona fides" of your clients' plans for providing sick leave pay for employees who are considered exempt under Regulations, Part 541, issued pursuant to section 13(a)(1) of the Fair Labor Standards Act.

One plan, as described in your letter of May 25, 1972, and as further explained in your July 20th letter, has been a company practice for many years. It calls for a qualifying period of 90 days after which an employee subject to this plan is paid for six full days of absence occasioned by sickness during a year. After the allotted six days have been used, the employee is docked for any other full day of absence occasioned by sickness. A second plan you describe is similar except that the number of days of sick leave is increased by three days for each year of employment up to a maximum of thirty days.

These plans would meet the criteria set out in section 541.118 (a)(3) of Regulations, Part 541, for a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by sickness and disability.

As to your question concerning the "bona fides" of your clients' plans, this can be determined only by the actual practice of your clients under the respective plans. The Wage and Hour Division would consider a plan to be bona fide if it is administered impartially to all employees subject to the plan's provisions.

Sincerely,

Horace E. Menasco  
Deputy Assistant Secretary

Enclosure