

FLSA-1346

January 3, 1994

This is in response to your letter in which you request an opinion as to whether adjustment to the compensation of salaried exempt employees who take off time from work for personal reasons comply with the requirements of section 541.118 of Regulations, 29 CFR Part 541.

You state that your client would like to adopt a policy requiring salaried exempt employees to use accrued vacation time or sick time in order to be paid for full-day or part-day absences taken for personal reasons. In addition, your client is contemplating requiring such employees to take full-day absences only, rather than part-day absences, once vacation and sick time are exhausted.

As stated in our letter to you of April 9, where an employer has bona fide vacation and sick time benefits, it is permissible under section 541.118 of the Regulations to substitute or reduce the accrued benefits for the time an employee is absent from work, even if it is less than a full day, if by substituting or reducing such benefits, the employee receives in payment an amount equal to his or her guaranteed salary. Therefore, it is our opinion that under section 541.118 of the Regulations, it is permissible for an employer to adopt a policy requiring salaried exempt employees to use accrued vacation or sick time in order to be paid for full-day or part-day absences for personal reasons or illness, provided the employee receives in payment an amount equal to his or her guaranteed salary. Where an employer requires the employee to take full-day absences only, when the employee only needs a portion of a day, once vacation and sick time are exhausted, it is our opinion that such a deduction from the employee's salary would not be in compliance with the requirements of section 541.118 of the Regulations. This kind of deduction of a full-day is not one of the kinds of deductions contemplated by section 541.118. Such a deduction is a requirement imposed by the employer, rather than a deduction resulting from the personal needs of the employee.

It should be noted that several recent court decisions have held, contrary to the opinion of the Wage and Hour Division, that employer policies requiring partial day deduction from accrued leave defeat the exemption for employees to whom the policies apply, even if such policies never result in any actual deductions from pay. See, e.g., Benzler v. Nevada, 804 F.Supp. 1303, 1306 (D.Nev. 1992); Aaron v. Wichita, 797 F.Supp. 898,907 (D.Kan. 1992); Service Employees Int'l Union v. San Diego, 784 F.Supp. 1503, 1510 (S.D.Cal. 1992). See also, Abshire v. County of Kern, 908 F.2d 483, 487 n.3 (9th Cir. 1990) (dictum).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or

historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator