

Labor Law Release

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Employers Can Deduct Vacation Benefits of Exempt Employees for Partial Day Absence

In an opinion issued Thursday by the California Court of Appeal, an employer's policy of deducting accrued vacation benefits for an exempt employee's partial day absence was validated. This practice has been permissible under federal law, but this is the first California court to uphold the practice under state law. (*Conley v. PG&E*, 2005 Cal.App. LEXIS 1122.)

Under federal law, an exempt employee is not entitled to overtime compensation. But to qualify as exempt, an employee must be paid a salary that is not reduced based on the quantity or quality of work performed. Federal regulations provide an exemption to this rule -- a deduction from pay may be made when an exempt employee is absent from work for one or more *full* days for personal reasons other than sickness or disability. But the law does not permit an employer to deduct pay for a *partial*-day's absence. If a deduction is made for a partial day absence, the employee's exemption is lost and (s)he is eligible for overtime compensation.

To avoid the loss of the exemption, employers have enacted policies deducting *vacation benefits* when an exempt employee is absent for a partial day. Federal courts have upheld these practices on the grounds that the employee's pay is not subject to deduction.

For example, under the PG&E policy, the company deducted vacation leave benefits from an exempt employee's vacation bank for any absence of at least four hours off work in any day. Employees challenged the policy claiming that it violated California law. Employees cited to statute and court opinion describing vacation benefits as a wage, not subject to forfeiture. Employees argued that by deducting vacation

benefits for a partial-day absence PG&E was deducting wages or pay.

The court disagreed with this argument. It concluded that the employer's policy did not result in a forfeiture of wages or vacation benefits. Rather, the policy merely regulated the timing of the use of the vacation benefit. The court specifically held that nothing in California law precludes an employer from following the federal rule on the deduction of pay for partial-day absences.

Employers must still exercise caution when deducting vacation benefits for partial-day absences. In a footnote, the court wrote that its opinion did not include partial-day absences of less than four hours. Moreover, if an employee does not have any vacation benefits, the employer must still pay the employee for the full day.

Failure to comply with these salary regulations will result in the employee losing his/her exemption and becoming eligible for overtime compensation. The consequences can be more serious if the employee leaves your employ. Failure to pay all wages at the time of termination can result in the imposition of additional penalties. Furthermore, in a civil action for unpaid wages, the employer may be required to pay the attorneys' fees of a prevailing employee.

This is not intended as a complete analysis of the subject matter, or legal advice on any specific matter. Contact us if you have specific questions or need further assistance.