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DLSE Issues Opinion Permitting Employer Deductions of Vacation and/or Sick Leave for Absences of Less Than Four Hours

On November 23, 2009, the Chief Counsel of the California Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE) issued an opinion letter stating that employers may deduct vacation and sick leave for exempt employees' partial-day absences of less than four hours as long as consistent with the employer's express policies. In addition, the DLSE opined an employer may deduct a combination of vacation leave and sick leave for a partial-day absence.

An employer may deduct from an exempt employee's salary only if the employee is absent due to illness or personal reasons for an entire work day. An employer may not deduct the pay of an exempt employee for a partial-day absence. Nevertheless, an employer may require exempt employees to use vacation leave or sick leave for partial-day absences. (See Conley v. Pac. Gas & Elec. (2005) 131 Cal.App.4th 260 ["*Conley*"]; see also "Court Finds California Employers Can Require Exempt Employees To Use Vacation Time For Partial Day Absences" posted on the Sheppard Mullin Labor & Employment Law Blog on July 21, 2005.) The DLSE interpreted both *Conley* and federal law to conclude an employer may require employees to use personal leave for partial-day absences in any increment consistent with the employer's express policies.

In one of the scenarios presented to the DLSE, an employee worked two hours in a workday, was absent for the remaining six hours, and had six hours of accrued vacation leave. The employer's policy permitted deductions from vacation leave in one-hour increments. The DLSE concluded that the employer may pay the employee for the entire work day for the two hours of work and deduct six hours from the employee's vacation leave.

The DLSE added that an employer may deduct a combination of vacation leave and sick leave when one or the other is insufficient to compensate for the entirety of the absence, and that combining leaves is permissible under the employer's policies. The DLSE found no "prohibition against combining the two types of leave" for a partial-day absence. The policy presented to the DLSE allowed employees to use vacation leave for illness if the employees exhausted their sick leave.

In another scenario presented to the DLSE, an employee was absent for eight hours due to illness. The employee had five hours of available sick leave and two hours of accrued vacation leave. The DLSE concluded that the company was permitted to reduce the employee's leave banks (for a total of seven hours) without jeopardizing the employee's exempt status as long as the company paid the employee's full salary for the additional hour.

Employers should keep in mind that DLSE opinion letters do not have the force and effect of binding precedent. In other words, courts are not required to follow the opinion letters. Courts may, however, find DLSE opinion letters persuasive when interpreting California law. For the full opinion, visit the [DLSE's webpage](#) and click on Letter No. 2009.11.23.