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California DLSE Shifts Enforcement Regarding Deductions from Exempt Employee Vacation and Sick Leave Banks

The Chief Counsel of California's Division of Labor Standards Enforcement (DLSE) recently issued an Opinion Letter allowing employers to deduct from an exempt employee's vacation and sick leave balance for partial-day absences in increments of less than four hours. Previously, the DLSE took the position that partial-day deductions from accrued paid leave could be made only in four-hour increments.

As a rule, an employer may not deduct from the salary of an exempt employee for a partial-day absence. An employer, however, may require exempt employees to use vacation or sick leave for partial-day absences. Now, according to the DLSE's Opinion Letter, employers may require exempt employees to use accrued personal leave for partial-day absences in any increment consistent with the employer's plan or policy. Employers may also require exempt employees to combine the use of accrued vacation and sick leave when either is insufficient to compensate for the absence. Importantly, any such deductions and combination of sick and vacation leave banks can only be done if the employer has express policies allowing such deductions and requiring combined use.

For example, suppose in an eight hour work day an exempt employee works one hour and takes seven hours off due to illness. Suppose also that this employee has accrued only two hours of sick leave and two hours of vacation. The employer must pay the full salary for the day, but may deduct four hours from the available leave (2 hours from sick leave and 2 hours from vacation time). Keep in mind that if this employee did not have any accrued vacation or sick leave to cover any portion of the seven hour absence, the employer would still have to pay the full salary.

The DLSE's new position brings California in line with the federal Fair Labor Standards Act regarding partial day deductions from accrued paid leave. To take advantage of the DLSE shift in position, California employers must carefully draft vacation and sick leave policies and give employees advance notice of any policy changes. Note that while DLSE opinion letters do not have the force of law, courts will look to them as guidance.

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The Opinion Letter, which contains many practical examples, is available on the [DLSE's website](#).

For over a decade, Miller Law Group has devoted its practice exclusively to representing business in all aspects of California employment law and related litigation. If you have questions about these new developments or your workplace obligations, please contact Michele Ballard Miller (mbm@millerlawgroup.com) or Carolyn Rashby (cr@millerlawgroup.com), or call 415-464-4300.

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