



## Deductions from Exempt Employees' Pay - Under California Law *By Lauraine Bifulco*

Generally, both Federal and State law provide that an exempt employee must be paid his/her full salary for any workweek in which he/she performs any work, regardless of the number of days or hours worked, subject to similar limited exceptions. California employers are cautioned to pay particular attention to this topic, as the state exceptions are narrower than the federal. The importance of this issue should not be underestimated since an employer who makes inappropriate deductions from an exempt employee's wages may cause that employee and possibly the entire category of employees to lose their exempt status and then become eligible for overtime pay. Additionally, back overtime, taxes, fines, penalties, attorneys' fees, and the risk of lawsuits can pose significant hardship for the employer.

**The following summarizes the current rules to be followed in California:**

**Quantity or Quality of Work:** An employer owes an exempt employee his/her full weekly

salary regardless of the quantity or quantity of work performed that week.

**Business Closures, Unavailability of Work:** If a business shuts down for less than a full week (even for a holiday), all exempt employees must receive their full salary. The same would apply if the employer does not have work available for the employee. Non-exempt employees, on the other hand, may be paid only for the time actually worked.

**Safety Violations or Disciplinary Action:** California employers may not make deductions from exempt employees' wages as penalties for safety violations and/or for disciplinary reasons.

**Arriving Late, Leaving Early:** Penalties or deductions from an exempt employee's salary for late arrivals or for leaving early are not allowed.

**Jury Duty, Appearing as a Witness, Military Leave:** Unless the employee is absent for an entire week, deductions may not be made from an

exempt employee's salary for these reasons.

**Initial/Final Week of Work:** Employers may make full day deductions from an exempt employee's regular salary for partial weeks worked during their first and last week of work.

**Worker's Comp Leave:** An employer is allowed to make full day deductions from an exempt employee on a workers' compensation leave, provided that the employee is receiving compensation from a workers' comp policy or a self-insured plan. Additionally, to take these deductions, the employer must maintain a plan that provides for compensation for non-work-related injuries or accidents.

**Sickness or Accident:** No deduction may be made from an exempt employee's salary for absences caused by sickness or accident unless the absence exceeds a full week. However, if the employer has a bona fide sickness or disability plan that pays full compensation during an absence and the employee has exhausted his/her allowance

under the plan or is not yet eligible under the plan, then the employer may make deductions for full days of work missed. An employer is free to deduct time from an exempt employee's sick leave balance in HOURLY increments, so long as the employer maintains a bona fide sick pay plan and the plan does not allow for a vested payment upon termination. If the plan allows employees to be paid out accrued, unused sick time upon termination, then the employer may only make deductions from the exempt employee's sick leave balance in 4 hour increments.

### **Vacations or Personal Time**

**Off:** California employers may make deductions from exempt employees' pay who take a full day of work off for personal reasons (including to respect a religious holiday). An exempt employee who works a partial day must be paid for the full day (be cautious about exempt employees performing work such as checking voicemail and email during a vacation).

An employer is free to deduct time from the employee's vacation or PTO balance as long it does so in 4 hour increments and the employee has time available in the plan. If the employee's vacation or PTO balance is insufficient to cover the 4 hour absence, the available balance may be deducted but

the employee will still be due his/her full salary for the day.

**What are best practices?** The rules permitting vacation, PTO, and sick deductions for exempt employees in increments of 4 hours are relatively new in California (2005, 2006). Despite now clearly being legal, our recommendation at Vantaggio HR is that exempt employees be required to use vacation, PTO, or sick leave in full day increments only and that they be paid their full salary with no paid leave balance deduction for partial day absences. We feel that this type of policy better respects the nature of exempt work and is a more fair and consistent practice to adopt.

**Family/Medical Leave:** An exempt employee who takes time off from work on an intermittent basis under FMLA or CFRA may have his/her salary, vacation, PTO, or sick balance reduced in hourly increments without risking his/her exemption.

**Pregnancy Leave:** California Pregnancy Disability Leave laws do not make it clear whether or not an exempt employee taking intermittent leave under PDL may have partial day salary deductions. As such, we recommend that unless the leave is also covered by FMLA, deductions only be taken in full day increments.

### **Supplemental Payments?**

Under California law, an employer is permitted to pay exempt employees above and beyond their regular weekly salary (bonuses, additional pay for "overtime" hours worked, etc.) without risking their exempt status.

**Do you need help?** If your company does not have written policies or job descriptions, you should seriously consider implementing them. If you already have these documents, make sure to review them for compliance on an annual basis. If you need more information about employee handbooks, which employees should and should not be exempt, specific deductions on one of your employees, wage orders, overtime regulations, sick leave plans, vacation/PTO benefits, or any other subject discussed in this article, please contact your labor attorney, HR consultant, or the federal and state agency websites.

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