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December 16, 2015

VIA ELECTRONIC MAIL ONLY

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Re: Healthy Workplace Healthy Families Act of 2014

Dear Sir/Madam:

The undersigned is an attorney licensed to practice law in the State of California. I request clarification from the Labor Commissioner concerning certain provisions of the Healthy Workplace Healthy Families Act of 2014, AB 1522, codified at Labor Code section 245 et seq. I note that this statute was recently amended by AB 304, which passed as urgency legislation, and was effective July 13, 2015.

AB304 provides in part that paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave. Questions arise of how to determine sick pay leave for an employee who is an exempt employee but is paid almost entirely on commission. For example, assume an employer has an employee who is entitled to one day of sick leave and is paid for commissions earned. Is that the only pay that person is entitled to for the paid sick leave or is he or she entitled to additional compensation and if so how is the additional compensation calculated? Assume in this example that commissions earned during a month are paid on the last day of the month.

The second example concerns an exempt employee who is entitled to a bonus that is not discretionary with the employer on or before December 31st of each year. Assume for the calendar year 2016, the amount of the bonus will be \$1,000.00 and will be paid on December 31st. The subsequent year (2017), the employee takes the day off and is entitled to paid sick leave for that day. The employee gets a normal salary plus a nondiscretionary bonus in December of each year. How is paid sick leave calculated for this one day of sick leave?

CERTIFIED SPECIALIST
- Estate Planning, Trust & Probate Law
- Family Law
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Thank you very much.

Very truly yours,



Lawrence S. Branton
Seltzer Caplan McMahon Vitek
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