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October 22, 2008

Chief Counsel  
Division of Labor Standards Enforcement  
P.O. Box 420603  
San Francisco, CA 94142

Dear Sir or Madam:

**Re: Deductions for Exempt Employees for Absences**

We respectfully request the opinion of the Chief Counsel of the State Labor Commissioner on the interpretation of the policies on deductions for Exempt employees for absences. Based on our understanding of the policies on deductions for Exempt employees, we are allowed to deduct vacation/sick leave accrued for partial day of absence in the following manner:

- From vacation for personal reasons provided it is for 4 or more hours absence in a workday and there is vacation pay accrued.
- From sick leave (any hour) for illness as long as there is sick pay accrued.

Our organization has vacation and sick leave plans:

- Vacation can be used for any personal reasons including absences due to illness (when no sick leave accrued), attending doctor's appointment and/or providing medical care for family members, taking a vacation break, and/or preparing school examination etc. Vacation will be paid out upon separation from the organization.
- Sick Leave can be used for absences due to illness, attending doctor's appointment and/or providing medical care for family members. Unused sick leave will not be paid out upon separation from the organization.

Per our personnel policies, all accrued sick leave (except when requested leave is not related to illness) and vacation must be exhausted before any unpaid leave of absence can be approved. Also in normal situation, employees use their vacation hours for illness when they do not have sick leave accrued because employees want to get paid for the time off.

In order to ensure we have correct understanding of the policies on deduction for Exempt employees, we called the State Labor Commissioner for advice using some examples, but we were advised to contact the Chief Counsel to obtain an opinion on the matter instead.

Please be advised that we are unable to find any California decision or prior DLSE opinion on point. We have actively researched the subject matter on the DLSE website, including the DLSE Enforcement Policies and Interpretations Manual found on the website. Also, the opinion is not sought in connection with anticipated or pending private litigation concerning the issue

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addressed in the request nor is the opinion sought in connection with an investigation or litigation between a client or firm and the Division of Labor Standards Enforcement.

We would appreciate it very much if you could advise if the following scenarios with the recommended deduction and payment are in compliance with the law:

**(A) TIME OFF DUE TO PERSONAL REASONS**

**Scenario A1: Employee took 8 hours off for personal reasons.**

- Employee has 5 and 0 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
5	0	0	8 hours off personal reasons	- 8 hours unpaid

**Reason:** Deduct pay for complete day of absence when no vacation accrued.

**Scenario A2: Employee took 8 hours off for personal reasons.**

- Employee has 5 and 8 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
5	8	0	8 hours off personal reasons	- 8 hours vacation deduction

**Reason:** Deduct vacation accrued for complete day of absence.

**Scenario A3: Employee took 8 hours off for personal reasons.**

- Employee has 5 and 2 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
5	2	0	8 hours off personal reasons	- 2 hour vacation deduction - 6 hours unpaid

**Reason:** After deducting all the vacation accrued, deduct 6 hours pay for the balance of the complete day off.

**Scenario A4: Employee worked 2 hours and took 6 hours off for personal reasons.**

- Employee has 1 and 6 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
1	6	2	6 hour off personal reasons	- 2 hours work pay - 6 hours vacation accrual deduction

**Reason:** Employee absent for 4 or more hours in a workday, therefore deduct the vacation accrued for the 6 hours off.

**Scenario A5: Employee worked 3 hours and took 5 hours off for personal reasons.**

- Employee has 5 and 0 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
5	0	3	5 hour off personal reasons	- 3 hours work pay - 5 hour absence with pay

**Reason:** Employee absent for 4 or more hours in a workday, pay 5 hours absence because there is no vacation accrued for deduction.

**Scenario A6: Employee worked 4 hours and took 4 hours off for personal reasons.**

- Employee has 1 and 3 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
1	3	4	4 hour off personal reasons	- 4 hours work pay - 3 hours vacation accrual deduction - 1 hour absence with pay

**Reason:** Employee absent for 4 hours in a workday, after deducting all the vacation accrued, pay 1 hour absence because there is insufficient vacation accrued for a total deduction of 4 hours.

**Scenario A7: Employee worked 5 hours and took 3 hours off for personal reasons.**

- Employee has 1 and 8 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
1	8	5	3 hour off personal reasons	- 5 hours work pay - 3 hours absence with pay

**Reason:** Pay 3 hours absence because deduction of vacation is not permitted since the absence is less than 4 hours.

**(B) TIME OFF DUE TO ILLNESS**

**Scenario B1: Employee took 8 hours off due to illness.**

- Employee has 0 and 0 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
0	0	0	8 hours off sick	8 hours unpaid

**Reason:** Deduct pay for complete day of absence when no sick leave/vacation accrued.

**Scenario B2: Employee took 8 hours off due to illness.**

- Employee has 0 and 8 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
0	8	0	8 hours off sick	- 8 hour vacation accrual deduction

**Reason:** When no sick leave accrued, deduct vacation for the complete day off. Per organization's policy, employee must exhaust vacation accrued prior to taking unpaid leave. In addition, normally employee wants to use vacation accrued to get paid for the time off.

**Scenario B3: Employee took 8 hours off due to illness.**

- Employee has 4 and 6 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
4	6	0	8 hours off sick	- 4 hours sick accrual deduction - 4 hours vacation accrual deduction

**Reason:** After deducting all the sick leave accrued, deduct vacation accrued for the balance of the complete day off. Per organization's policy, employee must exhaust vacation accrued prior to taking unpaid leave. In addition, normally employee wants to use vacation accrued to get paid for the time off.

**Scenario B4: Employee took 8 hours off due to illness.**

- Employee has 5 and 2 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
5	2	0	8 hours off sick	- 5 hours sick accrual deduction - 2 hours vacation accrual deduction - 1 hour unpaid

**Reason:** After deducting all the sick leave and vacation accrued (same reasons as Scenario B3), deduct 1 hour pay for the balance of the complete day off since there is insufficient sick leave/vacation accrued for deduction.

**Scenario B5: Employee worked 1 hour and took 7 hours off due to illness.**

- Employee has 2 and 5 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
2	5	1	7 hours off sick	- 1 hour work pay - 2 hours sick accrual deduction - 5 hours vacation accrual deduction

**Reason:** Employee absent for 4 or more hours in a workday, therefore deduct all the sick leave and vacation accrued for the 7 hours off.

**Scenario B6: Employee worked 1 hour and took 7 hours off due to illness.**

- Employee has 2 and 2 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
2	2	1	7 hours off sick	- 1 hour work pay - 2 hours sick accrual deduction - 2 hours vacation accrual deduction - 3 hours absence with pay

**Reason:** Employee absent for 4 or more hours in a workday, therefore deduct all the sick leave and vacation accrued for 4 hours off. Pay 3 hours absence because there is insufficient sick leave and vacation accrued for a total deduction of 7 hours.

**Scenario B7: Employee worked 1 hour and took 7 hours off due to illness.**

- Employee has 0 and 2 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
0	2	1	7 hours off sick	- 1 hour work pay - 2 hours vacation accrual deduction - 5 hours absence with pay

**Reason:** Employee absent for 4 or more hours in a workday, therefore deduct all the sick leave and vacation accrued for 2 hours off. Pay 5 hours absence because there is insufficient sick leave and vacation accrued for deduction.

**Scenario B8: Employee worked 5 hours and took 3 hours off due to illness.**

- Employee has 0 and 4 hours of outstanding sick leave and vacation accrued respectively.

<u>Sick Pay Accrued Balance</u>	<u>Vacation Accrued Balance</u>	<u>Total Hours Worked</u>	<u>Total Hours Absence</u>	<u>Recommended Deduction and Payment</u>
0	4	5	3 hours off sick	- 5 hour work pay - 3 hours absence with pay

**Reason:** Pay 3 hours absence because there is no sick leave accrued and the deduction of vacation is not permitted since the absence is less than 4 hours.

Please let us know if you need further information on the subject. I can be reached at 650-243-4888, ext. 882 or [mcheung@aars-inc.org](mailto:mcheung@aars-inc.org).

Thank you very much for your assistance.

Yours truly,



Mary Cheung  
Human Resources Director

2009.11.23

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