



## California DLSE Issues Opinion Allowing Incremental Deductions from Leave Balances for Exempt Employees

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California employers have new options to consider in addressing exempt employees who take off work for less than a full day. Health care providers who have limited resources in time and money for their practice may find these options beneficial.

On November 23, 2009, the Division of Labor Standards Enforcement (DLSE) issued an opinion letter setting forth circumstances under which it deems deductions from the leave balances of salaried employees to be in accord with California law without causing loss of an employee's exempt status. This may have significant implications to health care providers.

Consider for example, a provider who has a staff of exempt managers and nurses. Unless absences are due to the Family Medical Leave Act, California and federal law prohibit any reduction from their pay for absences of less than a full day. Although no deduction may be made to their salary, DLSE states that if the employer has a bona fide benefits plan, it may reduce the employee's leave balance for the time absent whether it is for a partial or full day. Further, DLSE finds no legal restriction establishing a limitation for the amount of hours to be reduced. Therefore, the DLSE opinion indicates that hourly incremental reductions from leave balances are acceptable.

While California courts are not bound by DLSE opinion letters, they are considered persuasive evidence. Therefore, California employers should proceed with caution when implementing policies based upon this most recent opinion letter. In situations where the employee has used up their leave balance and is absent for less than a full day, the prohibition against reduction to the employee's salary remains. Additionally, employers should ensure that they have a bona fide leave plan before implementing policies involving reductions of leave balances.

The recent DLSE opinion letter provides options for providers to consider in addressing the issue of partial day absences of their exempt employees. Such absences can result in a significant amount of loss time to providers, who are already pressured with time



demands in their profession. However, before adopting a bona fide leave policy or making policy changes affecting pay and leave benefits and compensation, providers should consult with counsel to ensure they weigh the risks and benefits and fully comply with federal and state requirements.

California Division of Labor Standards Enforcement Opinion letter, Nov. 23, 2009:  
<http://www.dir.ca.gov/dlse/opinions/2009-11-23.pdf>

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