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This is in response to your letters requesting an opinion as to the application of section 541.118 of Regulations, 29 CFR, Part 541, to the vacation and sick leave policies one of your clients wishes to implement for salaried exempt employees.

You state that your client wishes to implement the following policy language with regard to vacation and sick leave for salaried exempt employees.

Vacation: Vacation may, at the employee's option, be used in not less than one hour increments to permit an employee to take a partial day vacation. Under no circumstance will an employee's weekly salary be reduced as a result of taking time off under this policy.

Sick Leave: Exempt employees may use sick leave in one hour increments, provided that under no circumstances will an exempt employee's weekly salary be reduced for an absence of less than a full day.

You ask if the above procedures for partial day vacation and sick leave meet the salary requirements for salaried exempt employees, as discussed in section 541.118 of the regulations.

It is our opinion that an otherwise salaried exempt employee will be paid on a "salary basis" as discussed in section 541.118 of the regulations under the circumstances described above. This opinion is in accord with the position set forth in my letter dated March 30, 1994 to of your corporate office in Lexington, Massachusetts, and is consistent with our interpretation of accrued leave plans under Section 541.118, notwithstanding the dicta in the 1990 Abshire decision. It would be appropriate to regard this letter as a modification to your 1993 settlement agreement with the Department.

Sincerely,

Maria Echaveste
Administrator