

JUL 23 1997

This responds to your letter of May 1, 1997, concerning Wage and Hour's present enforcement position on the issue of whether the substitution of paid vacation, personal or sick leave for partial-day absences will defeat the exempt status under section 13(a)(1) of the Fair Labor Standards Act.

Wage and Hour's current enforcement position remains as stated in the enclosed letters dated April 14, 1992, and July 17, 1987. Where an employer has bona fide benefit plans for vacation, personal or sick leave, it is permissible to substitute or reduce the accrued leave in the plans for the time an employee is absent from work, even if it is less than a full day, without affecting the salary basis of payment, if by substituting or reducing such leave the employee receives in payment an amount equal to his or her guaranteed salary. Where the employee's absence is for less than a full day, payment of an amount equal to the employee's guaranteed salary must be made even if an employee has no accrued benefits in the leave bank account, or if the leave account has a negative balance.

I trust that the above is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures