

AUG 11 1997

This is in response to your letter of March 18, 1997, concerning a sick leave plan for employees exempt under section 13(a)(1) of the Fair Labor Standards Act (FLSA). You wish to know whether the sick leave plan would affect the salary basis of payment as discussed in section 541.118 of the Regulations, 29 C.F.R. Part 541.

As described in your letter, the sick leave plan of your client provides:

[A]n employee will be paid his or her normal salary for the employee's first occurrence of absence in a calendar year. The employee will not be paid for the first two days of each and every subsequent occurrence of absence in a calendar year; rather, employees will be paid beginning on the third day of absence for each subsequent occurrence. Under no circumstances will salary deductions occur for partial day absences.

You ask whether the sick leave plan is considered to be a bona fide plan under section 541.118(a)(3). The plan you describe would meet the criteria set forth in section 541.118(a)(3) of 29 C.F.R. Part 541 for a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by sickness and disability. Thus, the salary basis of payment is not affected for otherwise exempt employees subject to the plan. The fact that employees are not paid for the first two days of every occurrence of absence after the initial occurrence of absence in a calendar year does not affect the bona fides of the plan as long as deductions are not made for absences of less than an entire day.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust that the above is responsive to your inquiry.

Sincerely,

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