



Exempt Employee Deductions

A California Court of Appeal addressed the question of how to handle partial-day absences for exempt employees. Here it is, short and sweet: *Employers can't dock an exempt employee's salary when they are absent from work for only part of a day. Employers can require employees to use their accrued vacation or PTO leave in any time increment without jeopardizing the employee's exempt status.*

Background on Deductions

Generally, to maintain exempt status under the executive, administrative and professional exemptions, the employee must be paid their full salary for a workweek in which they perform any work. This is known as the "salary basis" rule. There are exceptions to this rule in limited circumstances. The exceptions are:

- Employers may prorate an exempt employee's salary for their first and last week of work.
- Employers may make deductions from an exempt employee's salary for hours taken as intermittent or reduced FMLA and CFRA leave.
- Employers may deduct from an exempt employee's salary for a full-day absence for personal reasons.
- Employers may deduct from an exempt employee's salary for a full-day absence if the employee is out due to sickness or accident, was participating in a bona fide plan that provided for full salary replacement, and the employee has either yet to qualify for sick leave under the plan, or has completely exhausted all benefit under that plan.

Calculating Full-Day Deductions

1. The employee's annual salary is divided by 52 (the number of weeks in a year) to find the weekly salary.
2. The usual number of days (regardless of the number of hours usually worked in any workday) the employee is scheduled to work in a workweek (may not be less than five nor more than six) is divided into the weekly salary. (Note: An exempt employee's salary may not be reduced by more than one-fifth, even if they are regularly scheduled to work less than five days per week.)

Disciplinary Action & Deductions

Note that while federal law authorizes full-day deductions for limited disciplinary reasons, the Labor Commissioner's office has stated this is *inconsistent* with California law. However, both federal law and California law authorize deductions from an exempt employee's salary if they perform no work at all in a workweek. Thus, an exempt employee may be suspended without pay, so long as the suspension is for a full workweek – suspending an exempt employee without pay for less than a full workweek will defeat the employee's exempt status.

Exempt Employee Deduction Examples

Below are hypothetical deduction examples. These examples are outlined in an [Opinion Letter](#) by the Division of Labor Standards Enforcement (DLSE). While DLSE opinion letters are not binding law, and courts are not required to follow them, courts still often refer to them when deciding cases, as persuasive authority. As such, DLSE opinion letters offer employers guidance on complex wage-and-hour laws.

Note: For purposes of calculating deductions, the DLSE uses an 8 hour workday (i.e., 2080 hours/year).

Full-Day Absences/No Leave Available

1. Full-Day Absence for Personal Reasons and No Applicable Leave Available

Employee takes full day for personal reasons. Employee has 0 vacation hours and 5 sick leave hours.

Answer: Employer may deduct the full day's salary. There is an exception to the salary basis rule when the exempt employee is absent from work for one or more full days for personal reasons.

2. Full-Day Absence for Illness and No Applicable Leave Available

Employee takes full day due to illness. Employee has 0 vacation hours and 0 sick leave hours.

Answer: Employer may deduct the full day's salary only if employee already exhausted all sick leave under a "bona fide" plan, or the employee had not yet qualified for sick leave under a bona fide plan. (Proceed with caution when using "PTO" plans that combine sick and vacation into one bank. The law is not clear whether the employer can deduct from the salary after exhaustion of the PTO bank.)

Full-Day Absences/Sufficient Leave Available

3. Full-Day Absence for Personal Reasons and a Sufficient Leave Balance

Employee takes full day for personal reasons. Employee has 8 vacation hours and 5 sick leave hours.

Answer: Employer may deduct 8 hours from the employee's vacation bank. No salary deduction is permissible.

4. Full-Day Absence for Illness and a Sufficient Leave Balance

Employee takes full day due to illness. Employee has 8 vacation hours and 0 sick leave hours.

Answer: Employer may deduct 8 hours from the employee's vacation bank, so long as that employer has a policy requiring employees to use vacation for illnesses when no sick leave is left. No salary deduction is permissible.

Full-Day Absences/Insufficient Leave Available

5. Full-Day Absence for Personal Reasons and an Insufficient Leave Balance

Employee takes a full day for personal reasons. Employee has 2 vacation hours and 5 sick leave hours.

Answer: Employer may make salary deduction for the full-day absence and pay the employee 2 vacation hours (i.e., deducted from the employee's vacation bank). Sick leave is inapplicable.

6. Full-Day Absence for Illness and an Insufficient Leave Balance

Employee takes a full day due to illness. Employee has 2 vacation hours and 5 sick leave hours.

Answer: Employer may deduct 5 sick hours and 2 vacation hours (if permitted by policy) from employee's leave banks. Employer **cannot** deduct the remaining hour from the employee's *salary*. This is because the salary can only be reduced for time lost *due to illness* in full day increments either *once the sick pay bank is completely empty* or employee wasn't yet qualified for sick leave under a bona fide plan.

Note: It is up to the employee whether they want to use mandatory sick leave time. As such, make sure to confirm with the employee before deducting state or local-mandated paid sick time.

Partial-Day Absences/Sufficient Leave Available

7. Partial-Day Absence for Personal Reasons and a Sufficient Leave Balance

Employee works 2 hours and takes 6 hours off for personal reasons. Employee has 6 vacation hours and 1 sick leave hour.

Answer: Employer may deduct 6 hours from the vacation bank. No salary deduction is permissible.

Partial-Day Absences/Insufficient Leave Available

8. Partial-Day Absence for Personal Reasons and an Insufficient Leave Balance

Employee works 3 hours and takes off 5 hours for personal reasons. Employee has 0 vacation hours and 5 sick leave hours.

Answer: No deductions from sick leave bank (not applicable). No salary deduction. An employer may never reduce an exempt employee's *salary* for a *partial-day* absence.

9. Partial-Day Absence due to Illness and an Insufficient Leave Balance

Employee works 1 hour and takes off 7 hours due to illness. Employee has 2 vacation hours and 0 sick leave hours.

Answer: Employer may make deduction from vacation bank, so long as that employer has a policy requiring employees to use vacation for illnesses when no sick leave is left. The employer **cannot** deduct the remaining 5 hours from the employee's salary. An employer may never reduce an exempt employee's *salary* for a *partial-day* absence.