



**U.S. Department of Labor**  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

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**FLSA2009-2**

January 14, 2009

Dear **Name\***:

This is in response to your request for an opinion regarding whether your client may require exempt employees to use accrued vacation time during a plant shutdown of less than a workweek without violating the salary basis test and thereby affecting their exempt status under section 13(a)(1) of the Fair Labor Standards Act (FLSA).<sup>\*</sup> As described below, it is our opinion that the FLSA permits such practices.

It is the Wage and Hour Division's position that:

[s]ince employers are not required under the FLSA to provide any vacation time to employees, there is no prohibition on an employer giving vacation time and later requiring that such vacation time be taken on a specific day(s). Therefore, a private employer may direct exempt staff to take vacation or debit their leave bank account . . . , whether for a full or partial day's absence, provided the employees receive in payment an amount equal to their guaranteed salary.

Wage and Hour Opinion Letter [FLSA2005-41 \(Oct. 24, 2005\)](#); *see also* [29 C.F.R. §§ 541.600, 541.602\(a\)](#); 69 Fed. Reg. 22,122, 22,178 (Apr. 23, 2004) (“[E]mployers, without affecting their employees’ exempt status, may take deductions from accrued leave accounts.”). Therefore, it is our opinion that the employer may require exempt employees to use accrued vacation time for any absence, including one resulting from a plant shutdown, without affecting their exempt status, provided that employees receive a payment in an amount equal to their guaranteed salary. “[A]n exempt employee who has no accrued [vacation] benefits . . . or has a negative balance . . . still must receive the employee’s guaranteed salary for any absence(s) occasioned by the employer or the operating requirements of the business.” Wage and Hour Opinion Letter FLSA2005-41.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express 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 letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also

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<sup>\*</sup> Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino  
Acting Administrator

**\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**