



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

March 11, 2010

[REDACTED]

Re: Request for Opinion
Personal/Sick/Vacation Policy
File No.: RO-09-0185

Dear [REDACTED]:

This letter is written in response to your letter dated December 16, 2009, requesting an opinion as to whether employers are required to pay an overtime exempt salaried employee a full day's pay for days in which such employee works less than a full day. In this regard, your letter asks for an "explanation on the correct way to utilize their sick/person and vacation time."

As a matter of general law, neither federal nor New York State law requires that an employer provide vacation, personal or sick paid time off to its employees. These are benefits generally provided at the discretion of the employer, or based upon an employee contract or collective bargaining agreement. Therefore, no "correct" or prescribed method exists in which an employer may provide its employees with sick, personal, and vacation time.

While there is no requirement for an employer to provide such benefits to its employees, please be advised that Section 198-c of the New York State Labor Law provides that an employer who is a party to an agreement to pay or provide benefits or wage supplements to an employee (which would include paid time off), but who fails, neglects or refuses to abide by the terms of such agreement, is in violation of the Labor Law and may be found guilty of a misdemeanor. It is well settled that "[a]ll that is required by section 198-c is that an employer abide by the terms of his agreement to provide benefits," (*See, Glenville Gage Co., Inc. v. Industrial Board of Appeals*, 70 AD2d 283, 286 (3rd Dept. 1979), *aff'd* 52 NY2d 777 (1980)). Such agreements need not be in writing. They can be established through credible evidence of an employers longstanding policy and practice or unwritten agreement with employees. It is additionally worth noting that employers are required to notify employees in writing or by

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publicly posting the employer's policy on sick leave, vacation, personal leave, holidays and hours. (Labor Law §195(5).) However, a failure by an employer to provide such written notification will not relieve the employer from its obligations under that policy, notwithstanding the fact that it was not put in writing. (*In re Center for Financial Planning*, PR-06-059 (Industrial Board of Appeals, 2008).)

Additionally, it is worth noting that the manner in which an employer implements its sick, vacation, and personal leave policy may have an effect on an employee's status with regard to eligibility for overtime pay under the Federal Fair Labor Standards Act. A fact sheet developed by the U.S. Department of Labor regarding the salary basis requirement for a number of exemptions to the Federal overtime provisions is enclosed for your review. Additional information with regard to the Federal Fair Labor Standards Act may be found at the U.S. Department of Labor's website at www.dol.gov

This opinion is based on the information provided in your letter dated December 16, 2009. A different opinion might result if the circumstances stated therein change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By: 

Jeffrey G. Shapiro
Associate Attorney

JGS:mp:lp
cc: Carmine Ruberto
Enclosure: FLSA Fact Sheet No. 17G