Employers often confuse the strict rules limiting the docking of exempt employees’ salary with different rules relating to partial-day deductions under vacation or “paid time off” (PTO) policies. A California appellate court has reaffirmed and clarified the vacation rule in Rhea v. General Atomics, No. D064517 (July 21, 2014).

Half Day Not A Vacay?

Lori Rhea is an exempt salaried employee of General Atomics. The company offers exempt employees accrued PTO. Exempt employees are required to use their PTO hours when they are absent from work for partial or full days. Deductions from accrued PTO are made for partial-day absences of any length.

Whether absent for a full or partial day, employees continue to receive their full salary and continue to accrue PTO during the period of absence. Further, even if absent for a full or partial day during a particular week, an employee is not required to use PTO for an absence in any week in which the employee works a total of more than 40 hours.

Rhea filed a class action lawsuit alleging that General Atomic’s PTO policy violated the California Labor Code. She alleged that the partial-day deductions from PTO were unlawful. She argued that (1) under California law, vacation or PTO is treated as “wages” or “deferred compensation” earned by an employee; (2) California law prohibits an employer from requiring forfeiture of wages, including accrued vacation or annual leave; and (3) by deducting annual leave for partial-day absences, an employer is impermissibly requiring a forfeiture of wages, because it is unlawful to dock the salary of an exempt employee for partial-day absences.

The trial court granted summary judgment in favor of General Atomics, finding the partial-day PTO deductions lawful. On appeal, the California Court of Appeal affirmed the decision.

Prohibition Against Salary Docking

To support her claim, Rhea pointed to the salary rule. So-called white collar exempt employees must be paid on a salary basis. With certain exceptions, that means that employers may not dock an exempt worker’s weekly salary. One exception under federal law is for full-day absences for personal reasons, sickness, or disability. California courts have followed this rule.

The appellate court acknowledged this rule and the exception, but found it inapplicable to Rhea’s complaint.
Rhea reasoned that if PTO is a form of wages, and if it is improper to dock salary for partial-day absences, then it must also be improper to deduct from the PTO accrual for partial-day absences. The appellate court found Rhea’s legal contentions to be flawed.

The appellate court noted that under federal law, there is no prohibition on an employer’s practice of deducting from an employee’s vacation or PTO for partial-day absences. Furthermore, a 2005 California case, Conley v. Pacific Gas & Electric Co., adopted the federal rule. The court also noted that the California Division of Labor Standards Enforcement (DLSE) endorses Conley.

The court reasoned that requiring an exempt employee to use accrued PTO leave does not result in any deduction made from the employee’s salary, which is what is specifically prohibited by federal and state law. Here, General Atomics does not take away or reclaim vested annual leave when an employee is absent for a partial day; it merely requires that the employee use the annual leave under the terms and conditions that it has created.” Quoting a precedential case, the court wrote: “The law permits an employer to offer new employees no vacation time and it correspondingly also affords an employer the right to control the terms under which vacation time may be exercised by employees.”

**PTO Deductions Allowed in Any Increment**

In Conley, the court endorsed a leave policy that called for deductions only if the absence is for four hours or longer. The court was silent on the issue of whether smaller deductions were permitted, because this was not an issue in that case.

Since then, some risk-averse employers have allowed for partial-day PTO deductions, but only in four hour increments.

In General Atomics, the appellate court found that deductions for any duration are legal. “We conclude that regardless of whether the absence is at least four hours or a shorter duration, a requirement that exempt employees use annual leave time for a partial-day absence does not violate California law.”

**Practical Considerations**

The General Atomics case opens the door for partial-day deductions of any length. But just because you can, should you? Robert A. Jones, a shareholder in the San Francisco office of Ogletree Deakins, observes: “Many employers believe that requiring partial-day deductions from PTO is generally inconsistent with the level of responsibility and authority of their exempt employees and may have a negative effect on employee relations and moral.”

PTO policies allowing for partial-day deductions should be carefully drafted and reviewed by legal counsel. “If an employer determines that it wants to require the use of available PTO for partial-day absences of exempt employees, in any amount, that employer must have a properly communicated policy that clearly sets forth that requirement as part of its PTO plan,” notes Jones. “In addition, the employer must understand that if an exempt employee does not have sufficient accumulated time available to cover any part of the full time the employee will be absent for less than a full day, the employee must still be paid for the full day in all circumstances.”
Remember that docking salary, as opposed to deducting from PTO, is an entirely different matter. Salary docking is permitted only in limited circumstances, and generally will not be permitted for partial-day absences. Employers should seek legal advice prior to docking salary.

Note: This article was published in the July 2014 issue of the California eAuthority.