



**SUPERIOR COURT OF CALIFORNIA - COUNTY OF KERN
OPERATING POLICY AND PROCEDURES**

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2019-02 Policy #:	Title – Timekeeping for Partial Day Absences by Exempt Employees	Effective Date: 12/16/19
Approved by:	 Tamarah Harber-Pickens, CEO Judith K. Dulcich, PRESIDING JUDGE	Prepared by: Carla Ortega

I PURPOSE: To ensure the Superior Court of California, County of Kern’s timekeeping requirements for exempt employees are in compliance with the Memorandum of Understanding Between the Superior Court of California, County of Kern and SEIU Local 521 (MOU) and the Human Resource Policies and Procedures, Section 1100.09.

II POLICY: It is the policy of the Superior Court, County of Kern, to follow the case law with respect to partial day absences for exempt employees. Exempt employees shall account for absences during the day of two (2) hours or more, and utilize leave time to cover those absences, unless the employee has accounted for a total of forty hours or more during the week in which the absence occurred.

III PROCEDURE:

Exempt employees shall account for any absence of two (2) hours or more and charge the time to accrued vacation or sick time (if appropriate), unless the employee has accounted for a total of 40 hours or more during the week in which the absence occurred.

Under the U.S. Department of Labor’s current interpretation of the Fair Labor Standards Act (FLSA), an employer can use accrued vacation time or other “paid time off” to cover an exempt employee’s partial day absence. The employer can count sick leave and vacation time in one-hour increments to cover a part-day absence, if that is consistent with company policy. See *Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560; DLSE Opinion Letter No. 2009.11.23 (Deductions: From Leave Credits for Partial and Full Day Absences of Exempt Employees); U.S. DOL Opinion Letter FLSA 2005-7: *Paid time off bank and 29 CFR 541.602*. As long as there has been no lessening of the week’s paycheck, the U.S. Department of Labor (DOL) will not find a “docking” of wages when the employer requires vacation or sick time to be charged for the absence. In addition, the opinion letter permits a California employer to deduct a combination of paid sick leave and vacation for a partial-day absence. See DLSE Opinion Letter No. 2009.11.23. Accordingly, employers can may deduct from an employee’s vacation or sick leave balance in less than half-day increments so long as the employee receives full pay for the day in any combination of vacation/sick pay and/or salary (for e.g., two hours of vacation pay and six hours of salary).

If an exempt employee does not have sufficient accumulated leave time available to cover any part of the absence, the general rule applies and the employee must still be paid for the full day in all circumstances if he or she worked for any part of the day. The employer is not relieved of this requirement even in situations where an exempt employee may have been reckless or unwise in using paid vacation leave. See U.S. DOL Opinion Letter FLSA 2005-41: *Leave taken during inclement weather and section 13(a)(1)*.

