



FENWICK & WEST LLP

## Fenwick Employment Brief

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### **CALIFORNIA COURT AUTHORIZES PARTIAL-DAY PTO DEDUCTIONS FOR EXEMPT WORKERS**

On July 21, a California court granted employers substantial flexibility to manage vacation and Paid Time Off (“PTO”) accruals when it held that employers may deduct from exempt employees’ PTO for partial-day absences without jeopardizing the employees’ exempt status. The holding in *Conley v. PG&E* represents the first time a California court has squarely addressed the legality of such partial-day deductions.

Under California and federal law, employees classified as exempt from overtime compensation must be paid on a salary basis, and salaries must not be subject to deductions for absences of less than a full day. Federal courts, construing the Federal Fair Labor Standards Act, have held that, although employers may not deduct an exempt employee’s wages for a partial-day absence, they may deduct from PTO accruals for such absences without jeopardizing the employee’s exempt status. However, no California court had addressed the issue under state law. Moreover, the California Division of Labor Standards Enforcement (“DLSE”) historically has taken the position that partial-day PTO deductions are inconsistent with a salary basis of payment and that such deductions would render an otherwise exempt employee non-exempt.

Through its holding in *Conley*, California’s First Appellate District Court rejected the historical DLSE position and aligned itself with the federal courts by expressly authorizing employers to require exempt employees to use accrued PTO for partial-day absences without converting the exempt employees to non-exempt. The court rejected the contention that such deductions from accrued PTO constitute an unlawful forfeiture of wages. [Note, however, that if an exempt worker takes a partial-day absence but does not have enough accrued PTO to cover the absence, the employer may not deduct wages to cover the absence.]

Finally, although not clear from the court’s decision, it appears the *Conley* holding is limited to partial-day absences of four hours or more in a day, and that employers may not require exempt workers to use accrued PTO for partial-day absences of less than four hours.

The Fenwick & West Employment Practices Group is available to discuss efficient methods to implement changes to vacation/PTO policies in light of this decision.

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