

## **FLSA-1375**

January 13, 1994

This is in response to your letter in which you request an opinion as to whether the City of \*\*\* (the City) Safety Incentive Program rewarding employees for perfect attendance on an individual and team basis complies with the requirements of section 541.118 of Regulations, 29 CFR Part 541.

You state that the City would like to adopt a safety incentive program rewarding employees for perfect attendance. You also state that lost time due to illness or injury will be defined as an eight hour day in which eight hours is deducted from an employee's sick leave balance due to illness, injury, medical, dental or optical care which incapacitates an employee from performing normal work duties, and for preventive health and dental services as outlined in the City's sick leave policy. Under the City's sick leave policy, any absences for less than a day will not be counted against any employee, exempt or nonexempt, for purposes of this program.

Where an employer has bona fide sick time benefits, it is permissible under section 541.118 of the Regulations to substitute or reduce the accrued benefits for the time an employee is absent from work, even if it is less than a full day, if by substituting or reducing such benefits, the employee receives in payment an amount equal to his or her guaranteed salary. Therefore, it is our opinion that under section 541.118 of the Regulations, it is permissible for an employer to adopt a policy such as the one you have described. The combining of nonexempt and exempt employees and tracking sick leave for the exempt employees will not cause the exempt employees to lose their exempt status. We assume for the purpose of this opinion that any absence for less than a full-day will not result in a deduction from an exempt employee's guaranteed salary.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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 request might require a different conclusion than the one expressed herein.

We trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste  
Administrator