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## **CALIFORNIA LABOR COMMISSIONER OPINES THAT EMPLOYERS MAY (UNDER CERTAIN CIRCUMSTANCES) REDUCE AN EXEMPT EMPLOYEE'S SALARY AS PART OF A TEMPORARY SCHEDULE REDUCTION**

A very favorable opinion letter for employers, from the California Labor Commissioner's Chief Counsel Robert Roginson, recently stated that it would be permissible "to reduce the work schedule of exempt employees, coupled with a reduction in their salaries, as an alternative to avoiding or limiting the need for job layoffs in the current difficult economic environment." In so doing, Chief Counsel Roginson concluded that an employer could reduce the regular workweek of exempt employees from five to four days, and implement a corresponding twenty percent reduction in salary.

This opinion brings the California Labor Commissioner in line with prior rulings by both federal courts and the U.S. Department of Labor, which have both consistently concluded that the salary basis test does not prevent a fixed reduction in an exempt employee's salary to correspond with a reduction in hours worked, provided that the reduction is not designed to circumvent the requirement that employees receive their full salary for any week in which they perform work. The opinion overruled a prior California Labor Commissioner opinion (from March 12, 2002) in which the California Labor Commissioner, contrary to the federal interpretation, took the position that such a salary reduction would render the affected employee non-exempt (and thus eligible for overtime compensation and subject to timecard and other requirements).

While a California court has never ruled directly on this issue, since the opinion letter is consistent with how both federal courts and the Department of Labor have interpreted the law, California employers should feel relatively safe in implementing temporary salary reductions connected with a schedule reduction consistent with the opinion letter, but should continue to do so with counsel to ensure that all other wage and hour requirements are followed. Importantly, the California Labor Commissioner made clear in its opinion that such a conclusion was premised on: (i) an employer experiencing significant economic difficulties; and (ii) the employer having an intent to restore the full five-day work schedule and the full salaries of exempt employees as soon as business conditions permit. Further, notwithstanding the salary reduction, to remain exempt, employees must continue to earn a monthly salary equivalent to no less than two times the state minimum wage, and must continue to satisfy the duties test for the applicable exemption.

It is important to note that the schedule reduction addressed in the opinion letter was for a *full workday*. Wage and hour laws tend to be much more restrictive as to when salary deductions

may be made for a *partial day* reduction in hours of an exempt employee. Employers should consult with counsel before reducing salary in connection with a partial day schedule reduction.

Finally, employers should not confuse such a temporary schedule/salary reduction with a shutdown of operations on particular dates. A schedule/salary reduction involves a *fixed* change in the employee's *regular* schedule and salary, whereas a shutdown generally involves ceasing operations on a particular occasion. As we have discussed in previous articles, employers generally may not reduce an exempt employee's salary in connection with a *shutdown* unless the employee performs no work for the entire payroll workweek.

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