

**California DLSE Approves of Simultaneous Reduction of
Workweek and Salary of Exempt Employees**

August 26, 2009

In a much-anticipated opinion, on August 19, the California Division of Labor Standards Enforcement (DLSE) aligned itself with federal law by allowing for the simultaneous reduction of a an exempt employee's workweek and salary without calling into question whether the employee is paid on a "salary basis" for overtime exemption purposes.

The question presented to the DLSE was whether an employer, when faced with a difficult economic environment, can reduce its employees' workweek from five days to four days and simultaneously reduce their salaries by 20% or some other proportion, without running afoul of the salary basis test for application of the white-collar exemptions from overtime requirements.

In addition to meeting applicable duties requirements, qualifying "white collar" employees must earn a monthly salary that is no less than two times the state minimum wage for full-time employment, defined as 40 hours per week. This qualifying amount is currently at least \$640 per week for white-collar (administrative, professional, and executive) employees.

In interpreting California's salary basis requirement, the DLSE followed federal interpretations of the Fair Labor Standards Act's salary basis test. Applicable federal regulations provide that an employee is paid on a salary basis if he or she regularly receives a predetermined amount of compensation for each workweek that is not subject to reduction based on variations in the quality or quantity of work performed. 29 C.F.R. § 541.602. Also, if an employee is ready, willing, and able to work, deductions from that predetermined compensation may not be made for time when work is not available. *Id.*

The U.S. Department of Labor (DOL) has determined that the salary basis test does not preclude a bona fide fixed reduction in salary that corresponds to a reduction in the normal workweek, as long as the reduction is not designed to circumvent the requirement that employees receive their full salaries in any week they perform work. *See* DOL opinion letters 1970 WL 26462, 1997 WL 998010, and 1998 WL 852696.

Despite the prior DOL opinions permitting simultaneous workweek and salary reductions, in a 2002 opinion, California's DLSE had concluded that reducing the salary of an exempt employee during a period where the company operates a shortened workweek due to economic conditions violates the salary basis test. It relied in part on a federal court decision from the Northern District of New York, *Dingwall v. Friedman Fisher Associates, P.C.*, 3 F. Supp. 2d 215 (N.D.N.Y. 1998).

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