



Unexpected Vacations: Tough economy Leads to Forced Vacations

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The good news is you are going on vacation. The bad news is it is unpaid.

With unemployment topping 11 percent in California, the tough financial environment is causing many employers to consider cost-savings in the area of employee compensation. The ideas sometimes include a temporary or intermittent scheduling of unpaid days off for employees whom the employer classifies as exempt executive, administrative or professional employees under the federal Fair Labor Standards Act and California law.

As employers consider what to do, they should be careful not to undercut the "salary basis" of payment that is necessary in order to treat most such employees as exempt. Lean times will not be a defense to the substantial liability that usually results when employees no longer qualify for a salary basis exemption. Even if the financial pressure is on, resist the temptation to act in haste where these matters are concerned.

Paying on a "salary basis" means that each pay period an employee regularly receives a fixed, predetermined amount of money (currently at least \$455 per week under the FLSA and \$640 per week under California law) for every workweek in which the person performs any work. U.S. Labor Department rules provide that, with some exceptions, this amount cannot be subject to reduction based upon the number of hours or days the employee works. More to the point, the salary may not be docked for absences during a workweek caused by the employer or by the organization's operating needs.

Employers do have at least some options. One of them is to reduce exempt employees' salaries (temporarily or otherwise) on a going-forward basis, such as in connection with implementing a shortened work schedule. To meet the exemption rules, each employee's new salary rate still must be at least \$640 per week and must still be paid consistently with the "salary basis" rules. That is, the lowered salary could be docked only when those rules allow it, which would not include days off in a workweek due to shutdowns.

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