

Certain Reductions to Salaried Exempt Pay and Work Schedules Approved

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Whether an employer may temporarily reduce the work schedules and, correspondingly, the salaries of exempt employees in order to avoid job layoffs during difficult economic conditions was recently the subject of an opinion letter by the California Labor Commissioner. The opinion letter, dated August 19, 2009, announced that the Commissioner would reconsider a prior opinion prohibiting reduction of a salaried exempt employee's salary in connection with a reduced work schedule. The interpretation brings California's enforcement position in line with federal law interpreting the federal "salary basis" test. The opinion, issued through California's Division of Labor Standards Enforcement (DLSE), responded to an inquiry by an employer that wanted to reduce the work schedule of its salaried exempt employees, along with a concurrent reduction in their salaries, for business reasons related to the recession. The opinion is relevant to financial institutions in the state of California and potentially to institutions elsewhere, depending on state law, regulation, and interpretation and the specific facts of the situation.

HR managers should speak with legal counsel to determine the steps that can be implemented to enable an employer to successfully defend the exempt status of its work force. Managing cost-cutting efforts is merely one of the considerations that should be part of an employer's exemption checklist.

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