



Salary Deductions for Exempt Employees - New Rules or Old Rules? *By Lauraine Bifulco*

On May 30, 2001, the California Labor Commissioner announced some significant changes to state wage and hour regulations. Detailed in an opinion letter from the Labor Commissioner's legal counsel, the changes would have affected how California employers must pay exempt employees (see insert for information about what an exempt employee is) and in what circumstances deductions are permitted from exempt employees' wages. In brief, the new interpretation would have required that an exempt employee be paid his/her full salary for *any month* in which he/she performs any work, regardless of the number of days or hours worked, subject to very limited exceptions for vacations and sick leave.

After supposedly receiving a barrage of phone calls, emails, and letters, the Labor Commissioner withdrew the opinion letter on June 22, 2001, stating that the Industrial Welfare Commission would be reviewing this new "monthly salary test" on June 29, 2001. However, when the IWC

convened on June 29th, only two of its members were present. They were unable to proceed without a quorum. After several more meetings and hearing extensive testimony, the IWC finally voted to amend Wage Order 5 to add language clearly stating that California will continue to follow federal Fair Labor Standards Act (FLSA) rules when determining allowable deductions for exempt employees. Additionally, the IWC voted to conduct hearings to explore the option of amending all the other wage orders.

The federal rules require an exempt employee be paid his/her full salary for any week in which he/she performs any work, regardless of the number of days or hours worked, subject to similar limited exceptions for vacations and sick leave. However, all California employers are cautioned to keep informed about any possible new developments. The importance of this issue should not be underestimated since an employer who makes inappropriate deductions from

an exempt employee's wages will cause the employee to lose his/her exempt status and then become eligible for overtime pay.

The following summarizes the current rules to be followed in California:

Business Closures: If a business shuts down for less than a full week, all exempt employees must receive their full salary. Non-exempt employees may be paid only for the time actually worked.

Safety Violations: California employers may not make deductions from exempt employees' wages as penalties for safety violations.

Arriving Late, Leaving Early: Penalties or deductions from an exempt employee's salary for late arrivals or for leaving early are not allowed.

Sickness or Accident: No deduction may be made from an exempt employee's salary for absences caused by sickness or accident unless the absence exceeds a full week. However, if

the employer has a bona fide sickness or disability plan that pays full compensation during an absence and the employee has exhausted his/her allowance under the plan or is not yet eligible under the plan, then the employer may make deductions for full days of work missed.

Jury Duty, Appearing as a Witness, Military Leave:

Unless the employee is absent for an entire week, deductions may not be made from an exempt employee's salary.

Vacations or Personal Time Off:

California employers may make deductions from exempt employees' pay who take a full day of work off for personal reasons. An exempt employee who works a partial day must be paid for the full day. Whether or not you can deduct partial days of vacation from an exempt employee's vacation balance is currently a bit unclear under CA law. Employers should seek legal guidance when developing or modifying a vacation policy.

Do you need help? If your company does not have written policies, you should seriously consider implementing a company policy manual or employee handbooks, especially if the monthly salary test ends up being implemented. If you have a manual in place, a thorough review will be imperative once the new

regulations are clarified. If you need more information about employee handbooks, which employees should and should not be exempt, specific deductions on one of your employees, wage orders, overtime regulations, sick leave plans, vacation benefits, or any other subject discussed in this article, please contact your labor attorney, HR consultant, or the federal and state agency websites.

What is an Exempt Employee?

Don't make the same mistake as Farmers' Insurance

In a record-breaking class action lawsuit, Farmers Insurance was recently hit with a \$90 million judgment for having misclassified many of its workers as "exempt" employees and not having paid them overtime.

To clarify an often-confusing term, "exempt" employees are those who are not subject to the overtime pay provisions of state and federal law. Many employers believe that simply calling an employee a "manager" or putting the person "on salary" makes them exempt from overtime pay.

However, Federal and California law describe very specific types of duties that can

qualify a person as an "executive," "administrative," or "professional" exempt employee. Don't make the mistake of assuming that you know what these terms mean - the definitions are in many cases not what you would expect, and very little is left to the discretion of the employer.

For example, an exempt professional employee is usually only someone who is licensed or certified by the state and who practices in one of the specific areas that the law lists. Accountants (other than CPA's) are not exempt professionals, despite the fact that most of us would refer to them as professional people.

In order to be exempt under California law, the employee needs to spend at least 50% of his/her time engaged in duties that meet the state's definition of exempt work. In addition, the employee must be paid a monthly salary equivalent to no less than two times the state minimum wage for full time (40 hours per week) employment. California's current minimum wage is \$6.75 hour, meaning that an exempt employee needs to make at least \$2340 per month. Should minimum wage increase, so will the salary requirement for an exempt employee.

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