

## FLSA Alert

Sep-28-2009

### California Follows DOL On Work Week And Salary Reduction Issue

A common question asked by employers seeking to reduce labor costs during the current recession is whether they may temporarily reduce the work hours and salary of overtime-exempt employees yet still maintain their exempt status. As we discussed in an MBT alert in December 2008, the United States Department of Labor (DOL), has already answered this question with a qualified yes. The DOL has said that as long as the employees in question earn the minimum salary required under the "white collar" overtime exemptions (currently \$455 per week), and perform duties consistent with these exemptions, an employee would not lose his/her exempt status if the employer proportionately reduced work hours and salary. An example of such a reduction would be reducing the work week from 40 hours to 32 hours, while reducing the salary by 20 percent.

Despite the U.S. DOL's opinion on this issue, employers seeking to reduce hours and salary still face uncertainty because of the myriad of state laws that come into play. ***Namely, state departments of labor are not bound by DOL opinions, and it remains possible that an agency in any given state might reach a contrary conclusion.***

One state which has recently joined the DOL in permitting reductions in hours and salary is California. The California Division of Labor Standards Enforcement (DLSE) recently issued an opinion letter in response to a question by an employer as to whether it could temporarily reduce the regular work week of exempt employees from five days to four and, at the same time, reduce their salary by 20 percent yet still maintain the exempt status of these employees.

After reviewing applicable California law, past DLSE opinion letters and court decisions, the DLSE joined the DOL in permitting employers to temporarily reduce work hours and salary of exempt employees proportionally without having those employees lose their exempt status. Of course, the DLSE opinion letter made clear that the exempt status of these employees would also depend on them otherwise qualifying for an exemption from overtime by virtue of their salary amount and duties.

While every state's laws are different, the combined opinions of the U.S. DOL and the California DLSE show that the trend continues to be in favor of permitting employers to proportionally reduce the work hours and salary of salaried exempt employees. ***However, should you find yourself considering a change in work hours and salaries, be sure to determine whether your state's wage and hour agency would permit the change before committing to it.*** We will continue to monitor changes in the law on this issue.

---

For more information, please contact Paul Garry, Erika Dillon or any other MBT labor and employment lawyer at (312) 474-7900.

*MBT is a leading litigation firm with 90 attorneys and offices in Chicago, Dallas and Phoenix. In addition to concentrating in labor and employment law, our attorneys focus on commercial litigation, insurance coverage, professional liability defense, attorney fee disputes and environmental law.*

For more information, please visit [www.mbtlaw.com](http://www.mbtlaw.com).

---

*MBT provides e-alerts for general information only; this information should not be construed as legal advice. Attorney Advertising.*