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Layoffs and Reduced Workweeks Can Create Wage and Hour Problems

By: John E. Murray

The current economy has led many employers to consider layoffs or reduced workweeks. Some employers hope that temporary shutdowns, or reduced workweeks, will allow them to avoid permanent layoffs. However, employers must take care so that these cost-saving measures do not open them to liability under the federal Fair Labor Standards Act.

The FLSA, and the Department of Labor's regulations, divide employees into two groups. Non-exempt employees are paid on an hourly basis. Short-term layoffs and reduced workweeks rarely present any concerns for these employees.

The second group consists of exempt employees paid on a salaried basis. As a general rule, these employees must receive their full salary for any workweek in which they perform any work. There is no obligation to pay exempt employees for weeks in which they do no work. However, they are entitled to pay during absences required by the employer and/or the operating requirements of the business.

The Department of Labor has issued a number of opinion letters which help to clarify when an employer may reduce the pay of a salaried employee because an economic downturn requires a shortened workweek or a short-term layoff:

1. Employers can require that exempt employees use vacation or other paid time during any plant shutdown or short-term reduction in scheduled hours. If the plant shutdown or schedule change requires absences of less than one full workweek, exempt employees must be paid their full salary, even if they have no remaining vacation or paid time off. If the layoff is for a full workweek, there is no obligation to pay the exempt employee for that workweek.

2. If exempt employees choose to participate in a voluntary layoff or reduced schedule, there is no obligation to pay their full salary, even if the voluntary layoff is for less than a full workweek. However, the choice must be truly voluntary. The pay of an exempt employee may not be reduced for an involuntary layoff which is caused by economic conditions and lasts less than one week.
3. If an employer institutes a reduced schedule for exempt employees on a long-term or indefinite basis, the employer can reduce the pay of these employees. For example, if an employer reduces the schedule of all exempt employees to a four-day workweek, and that new schedule will remain in effect for the duration of the economic downturn, the employer could implement a 20% reduction in the salary of exempt employees during this new schedule.

When an employer makes a valid reduction in an exempt employee's salary, the employer still must pay the exempt employee at least \$455 per week. Any employee who receives less than this amount cannot be an exempt employee.

Finally, as the workforce shrinks, some job duties may be redistributed. To be exempt, employees must be paid on a salaried basis *and* their primary duties must be exempt job duties. Some employees may become non-exempt because of changes in their job duties. For example, an exempt executive employee must regularly direct the work of two or more employees. If those two employees are laid off, and their duties are assumed by the executive employee, she may no longer qualify as an exempt executive.

If you have any questions about the exempt status of your salaried employees, please contact John Murray.

If you have any questions about the issues raised by this e-alert, please feel free to contact John E. Murray at (414) 273-3910 or by e-mail at jmurray@lindner-marsack.com.

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