

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

## LEGAL SECTION

455 Golden Gate Avenue, Room 3166  
San Francisco, CA 94102  
(415) 703-4150H. THOMAS CADELL, JR., *Chief Counsel*

April 19, 1993

Steven R. Feldstein  
Heller, Ehrman, White & McAuliffe  
535 University Avenue  
Palo Alto, CA 94301-1908

Re: Labor Code Section 204

Dear Mr. Feldstein:

Your letter of November 17, 1992, regarding the above-referenced subject has been referred to this office for response. Please excuse the delay in responding to your inquiry but the letter was obviously lost either in the mails or was misplaced after arrival.

Before responding, I would like to review my understanding of the status of the workers who will be affected by the proposed change in pay schedule. You write that both exempt and non-exempt<sup>1</sup> salaried employees would be affected.

In your first numbered paragraph you state that each employee will be paid 1/24th of his or her annual salary on each payday. The paydays would be scheduled on the fifteenth of the month and the last day of the month<sup>2</sup>. You further state that the amount of pay would be "exactly the same" on each payday regardless of the precise number of days in the pay period. You ask if this is permissible under Labor Code §204?

In the opinion of the Labor Commissioner the plan is not permissible. Labor Code §204 provides, *inter alia*:

"[L]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

<sup>1</sup> Your letter indicates that although salaried, the non-exempt employees receive premium pay for overtime.

<sup>2</sup> As you point out, the number of days in the latter part of the month could vary depending on the month.

1993.04.19

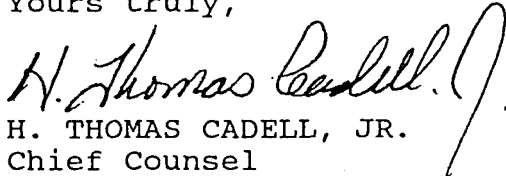
Steven R. Feldstein  
April 19, 1993  
Page 2

As you can see, non-salaried exempt and nonexempt workers must be paid for their services within ten days of the completion of the work. Also, they must be paid "[A]ll wages" earned during the period<sup>3</sup>. The exception to this requirement is salaried-exempt employees who meet the requirements of the FLSA who must be paid not less than once a month and not later than the 26th of the month with the proviso that the entire monthly salary must be paid at that time.

In the event the employer schedules paydays on a weekly, biweekly or semimonthly<sup>4</sup> basis must be paid within seven days of the completion of the payroll period. (See the last paragraph of Section 204)

Since the basic plan you propose will not work I do not address the questions you raise in numbered paragraphs 2, 3 and 4.

Yours truly,



H. THOMAS CADELL, JR.  
Chief Counsel

c.c. Victoria Bradshaw

---

<sup>3</sup> In addition, the Industrial Welfare Commission Orders provide:  
"Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise."

Thus, if a minimum wage worker were employed for a period from March 16th through March 31st and worked a total of 16 days in that period, the worker must receive at least minimum wages for all hours worked in that time period on the regularly scheduled payday (i.e., April 15th). Your proposal would only provide for 1/24th of the annual salary which, in the case of a minimum (or near-minimum) wage worker would not meet the requirements of the IWC Orders either.

<sup>4</sup> A semimonthly payroll which does not provide for payment on the fifteenth and the last day of the month but chooses other pay periods or pay days.

1993.04.19