STATE OF CALIFORNIA GRAY DAVIS, Governor

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Question received by e-mail at DLSE Info Web Site:

From: Paul Lafranchise [SMTP:plafranchise@lebeauthelen.com]
Sent: Monday, May 06, 2002 1:49 PM
To: DLSE Info
Subject: DISCIPLINARY DEDUCTIONS FROM EXEMPT SALARY

I HAVE AN URGENT NEED FOR AN ANSWER TO THE FOLLOWING QUESTION TODAY IF POSSIBLE:

IN LIGHT OF L.C. LUJAN'S RECENT OPINION LETTER REQUIRING THE USE OF THE FEDERAL "WEEKLY" SALARY BASIS RULES FOR EXEMPT EMPLOYEES, I.E., THAT EXEMPT EMPLOYEES MUST BE PAID A FULL "WEEK'S " SALARY FOR ANY WEEK IN WHICH THEY DO ANY WORK, CAN AN EMPLOYER DOCK A FULL WEEK'S PAY FROM AN EXEMPT EMPLOYEE FOR DISCIPLINARY REASONS?

ALSO, MAY AN EMPLOYER DEDUCT LESS THAN A WEEK, SUCH AS A DAY'S PAY OR 2 DAY'S SALARY, FROM AN EXEMPT EMPLOYEE FOR DISCIPLINARY REASONS?

I UNDERSTAND THAT FEDERAL REGS AND COURT DECISIONS ALLOW DEDUCTIONS FROM AN EXEMPT EMPLOYEE'S SALARY IN SOME CIRCUMSTANCES FOR DISCIPLINARY REASONS. THUS, SINCE YOU ARE FOLLOWING THE FEDERAL "WEEKLY" SALARY BASIS RULES, ABOVE, ARE YOU WILLING TO FOLLOW THE FEDS ON DISCIPLINE AS WELL?

Response By DLSE Info By E-Mail:

May 6, 2002

In answering your question, we first must distinguish between unpaid suspensions from work and penalties imposed for disciplinary reasons. Under California law, no employee can be "fined" or "penalized" for disciplinary infractions, as such a fine would conflict with Labor Code sections 221-223. This means that if work is performed, it must be paid at the contractual rate, without subsequent reduction for "disciplinary fines" or "penalties." On the other hand, an employer can suspend an employee from work without pay as a form of discipline. Obviously, if the worker is non-exempt, that does not present any problems, as the worker need only be paid for hours worked. If the employee is exempt, the provisions of the salary basis test would apply, so that certain types of deductions may defeat the exemption. Although Labor Code section 515(a), enacted as part of AB 60, requires

payment of a "monthly salary" as a prerequisite for exempt status, that term was construed, by Commissioner Lujan in his recent letter, to permit payment of such salary on a weekly basis, so as to permit a deduction of a full week of salary if an employee, for whatever reason, is not provided any work for a period of a full week. This would mean that an exempt worker could be suspended without pay for disciplinary reasons for a full week, and the deduction of that week of salary would not defeat his or her exempt status, provided that the monthly salary does not fall below the minimum monthly salary required under LC section 515(a) (currently, $2,340) for exempt status. But, consistent with the federal weekly salary basis test set out at 29 CFR section 541.118, deductions from salary for a suspension of less than a full week will defeat the worker's exempt status.

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