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March 24, 2008

Robert R. Roginson, Esq.
Chief Counsel
Division of Labor Standards Enforcement
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

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LABOR STANDARDS
ENFORCEMENT LEGAL
SAN FRANCISCO
2008 MAR 27 AM 11:48

Re: Alternative Workweek During Summer Months - Wage Order 4.

Dear Mr. Roginson:

We are seeking an opinion regarding the propriety of implementing an alternative workweek schedule that rotates between a schedule of four 9-hour days and one 4-hour day during the summer months and five 8-hour days during the rest of the year for all non-exempt employees. For example, between June and September, the non-exempt employees would have the following set schedule:

- Monday - 9 hours
Tuesday - 9 hours
Wednesday - 9 hours
Thursday - 9 hours
Friday - 4 hours

While no overtime premium would be paid for the 9th hour worked on Monday through Thursday, it would be paid for hours worked in excess of 9 on those days, as well as for hours in excess of 40 in a week and as otherwise required under California law. Beginning in October, and continuing through the end of May, the non-exempt employees would work the following schedule:

- Monday - 8 hours
Tuesday - 8 hours
Wednesday - 8 hours
Thursday - 8 hours
Friday - 8 hours

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During these months, standard overtime practices would be followed with employees receiving overtime pay for all hours worked in excess of 8 in a day and for the first 8 hours worked on the seventh consecutive day of the workweek, 40 in a week or double time after 12 in a day and after 8 hours worked on the seventh consecutive day in the workweek. The employer will follow the necessary procedures to implement the alternative workweek schedule as defined in Section 3(B) and (C) of the Wage Order to have its employees vote on implementing this schedule for all years going forward. In other words, once the employees have approved the schedule for 2008, no further votes would be required for 2009 and beyond for the summer alternative workweek schedule.

The employer has a thorough understanding of the procedures to be followed to implement an alternative workweek schedule, as well as the requirements once such a schedule has been adopted. This request is limited solely to the issue of whether an employer can take the steps in 2008 to implement an alternative workweek schedule that is seasonal in nature, i.e., with no further votes necessary in the upcoming years.

We understand that any opinion of the DLSE is based exclusively on the facts and circumstances described in this request and is given based on my representations, express or implied, that I have provided a full and fair description of all the facts and circumstances that would be pertinent to the DLSE's consideration of the questions presented. Existence of any other factual or historical background not contained in this letter might require a conclusion different from any opinion expressed by the DLSE in response to this letter. We represent that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. We also represent that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Division of Labor Standards Enforcement.

We would appreciate your opinion regarding the propriety of implementing such a schedule as quickly as possible. Thank you for your assistance in this matter.

Very truly yours,

JACKSON LEWIS LLP

Jonathan Siegel
Samantha N. Hoffman

