

March 4, 2009



CLIENT ALERT: WAGE & HOUR LAW DEVELOPMENTS

Topics covered in this alert:

- [California Court Addresses Special Restrictions on Releases of Wage Claims](#)
- [Court Retracts Prior Ruling & Requests Guidance from the California Supreme Court As to Whether Employers Are Required to Apply California Wage Laws to Non-California Employees When They Work in California](#)
- [Reduction of Salary & Work Schedule: Legal Risks As To Exempt Employees](#)
- [California Budget Package Modifies Alternative Workweek Law](#)

[California Court Addresses Special Restrictions on Releases of Wage Claims](#)

Many employers do not realize that special rules limit their ability to obtain a valid release of an employee wage claim. For example, federal law has been interpreted to require formal approval by the U.S. Department of Labor or a court of a release of overtime or minimum wage liability. Also, California Labor Code Section 206.5 provides that “[n]o employer shall require the execution of any release of claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made,” and makes it a misdemeanor to require an employee to sign such a release to receive wages.

In a recent case, [Chindarah v. Pick Up Stix, Inc.](#) (Cal. Ct. App. 2/26/09), several employees sued their former employer for overtime, even though they had signed an agreement purporting to release their overtime claims. The California Court of Appeal ruled in favor of the employer, holding that the employee releases were enforceable as to *California* law overtime claims because there was a “bona fide” dispute as to whether the employees were exempt from overtime. While [Chindarah](#) is a positive development for employers, the ruling should not cause employers to lose sight of the significant challenges that remain to obtain valid releases of possible wage claims, including the rulings that require U.S. Department of Labor or court approval to waive *federal* overtime or minimum wage claims, and the invalidity of releases unless there is a “bona fide” dispute as to whether the wages are due. The requirement of a “bona fide” dispute can affect claims to a wide variety of compensation within California’s

broad definition of “wages,” including salary, overtime, vacation, bonuses, commissions, and contractual severance. When an employer believes it may have potential wage exposure to an employee, and wishes to secure a release from the employee, it should carefully consider both federal and California law requirements to maximize the odds that there will be no claim for wages following the execution of the release agreement.

Court Retracts Prior Ruling & Requests Guidance from the California Supreme Court As to Whether Employers Are Required to Apply California Wage Laws to Non-California Employees When They Work in California

On November 6, 2008, the United States Court of Appeals for the Ninth Circuit ruled in Sullivan v. Oracle that employers were required to apply California wage laws, including daily overtime requirements, to employees based outside of California when they worked a full day or full workweek in California. On February 17, 2009, however, the court withdrew its opinion and requested that the California Supreme Court render a definitive opinion on the issue. We recommend that employers with non-exempt, non-California employees who sometimes perform work in California take steps to minimize potential overtime liability to such employees (e.g., preclude daily overtime work if possible), and continue to carefully monitor anticipated future rulings on this issue.

Reduction of Salary & Work Schedule: Legal Risks As To Exempt Employees

In addition to other cost-cutting measures, employers sometimes consider reducing the work schedule and salary of employees. This can present significant legal risk as to exempt employees working in California. Both federal and California laws require employers to pay exempt employees a fixed salary, which generally may not vary based upon the number of hours the employee works. While a federal opinion letter has indicated that an employer may make a fixed reduction in salary and work schedule at the same time, the California Labor Commissioner has stated that the federal opinion letter conflicts with California law and indicated that such schedule/salary adjustments would violate California overtime exemption requirements. California law generally permits an employer to reduce the salary of an at-will employee, so long as the employer pays at least the minimum required exempt salary of \$33,280 annually or non-exempt minimum wage of \$8 per hour. The risk comes into play when the salary reduction for an exempt employee *is accompanied by a reduction in hours*, which the California Labor Commissioner views as resembling an hourly (i.e., non-exempt) arrangement. Employers should consult with counsel for alternatives to minimize risk when seeking to reduce an exempt employee’s responsibilities or hours in connection with a salary reduction.

California Budget Package Modifies Alternative Workweek Law

The new California budget package contains several modifications to California Labor Code Section 511, the provision in the Labor Code governing alternative workweek arrangements. These changes are effective immediately. Previously, under the Labor Code, an alternative workweek arrangement was any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period. Because such a schedule permits employees to work for up to 10 hours in a day without overtime, implementing such an arrangement requires an employee election. The new law, A.B. 5, now permits employers to provide employees with a menu of work schedule options – to include eight hour days – on which they can vote. After ratification of an alternative workweek schedule, the new law permits employees, with employer consent, to move from one schedule option to another on a weekly basis, e.g., shifting between a 4/10 and 5/8 schedule weekly. Finally, the law codifies preexisting language in Wage Orders that define a work unit – the group voting on the alternative workweek provision – as a division, department, job classification, shift, separate physical location, or recognized subdivision thereof. Similar to the Wage Orders, the new law also provides that a work unit may consist of an individual employee as long as the criteria for a readily identifiable work unit is met.

Raymond H. Hixson
rhixson@hixsonnagatani.com
408-486-9977

Brian K. Nagatani
bnagatani@hixsonnagatani.com
408-486-9988



4633 Old Ironsides Drive, Suite 310 | Santa Clara, CA 95054

“Big firm sophistication. Small firm personal service and efficiency.”

To unsubscribe from our distribution list, please reply to this message and indicate “unsubscribe.” If this client alert has been forwarded to you, and you would like to be added to our distribution list, please e-mail your request to hixsonnagatani@hixsonnagatani.com.

This client alert is meant to assist in a general understanding of current law. It is not legal advice. Companies or individuals with particular questions should seek advice of counsel.