

## OC Register Q&A – Exempt Employees

**Q.** I am an exempt "professional" in the IT division of my company. A new managing director has been brought in and in an attempt to increase productivity has decided that if you only work 40 hours you are just doing your job. To be considered above average you must work a minimum of 45 hours. Currently at my company, part of our pay is held back for "variable" payout depending on company, department, team and individual goals. If I do my job and we meet all of our goals, can the company hold back this "variable" pay as is being threatened? If I do my job as well as I did the previous year does that justify me now "just doing the job" as opposed to above average as the previous year's review? Can exempt employees be forced to work more than 40 hours with no pay increase?

**A.** There are three issues with your question – exempt classification, variable pay and hours of work. First, does your job (and other similarly situated jobs) qualify as an exempt classification under California rules and regulations? There are five distinct exempt classifications under which a job may qualify – Executive, Professional, Administrative, Computer Professional, and Sales. If your job has been classified as Computer Professional as defined by the Labor Commissioner, to qualify, you must be paid at least \$45.84 per hour as of 01/01/05. There are several other factors that must also be considered, such as the nature of the work involved, before a correct classification can be determined. (Federal laws have less stringent standards, therefore employers should follow California regulations when determining exempt classifications.)

Secondly, only certain limited deductions are allowed from exempt employee's pay without it affecting the employee's status as an exempt classification. Employers are not allowed to make deductions from an exempt employee's pay for variations in the quantity or quality of work performed, unavailability of work, disciplinary reasons, or jury, witness, or military duty. If the variable pay is part of a bonus program, there are very specific rules that determine if a deduction is permissible. Many forfeitures and deductions of an incentive plan are considered unlawful under California Labor Code.

The last issue concerns hours of work for an exempt employee. The language under both California and Federal wage and hour regulations for matters such as a defined workweek, hours of work, overtime pay, and break and meal periods specifically exclude exempt employees from eligibility. If the job is properly classified as an exempt position, the employer may require the employee to work more than the traditional 40-hour workweek.