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**EMPLOYMENT LAW
BULLETIN**

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Commissioned Employee Without a Guaranteed Minimum Salary Is Not Exempt

The California Court of Appeal recently held in the case of *Negri v. Koning & Associates* that a commissioned employee paid based upon the number of hours worked, with no guaranteed minimum number of hours, does not receive a "salary" and therefore cannot be exempt from overtime and related wage and hour rules.

In *Negri*, an insurance claims adjuster was paid \$29 per hour based upon the total hours that he submitted to the employer each month. The employee worked and was paid for at least 40 hours per week, and received the same hourly rate when he worked in excess of 40 hours per week. The employer treated him as an exempt employee because the employee made his own schedule, was never supervised in the field, and otherwise satisfied the administrative exemption criteria in the applicable wage order.

However, one of the criteria for such exemption is that the employee receive a monthly salary equivalent to no less than twice the state minimum wage for fulltime employment. Here, even though the employee received well in excess of twice the minimum wage, and worked at least 40 hours per week, the Court of Appeal found that such compensation did not constitute a salary because the employee was not guaranteed a minimum salary. Accordingly, he could not be properly classified as an exempt employee.

Employers that are paying exempt employees based on the number of hours worked, must ensure that such employees receive a guaranteed minimum salary or they will be entitled to overtime compensation and treated as non-exempt.

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