



*Putting the human back into human resources*

## **Must I Designate a Set Pay Day?**

In this period of challenging financial times, companies are often working to juggle cash flow and to adjust payments for a number of their expenses. However, payroll for your employees is one area that should not be part of a plan to work through cash flow issues.

California Labor Code requires that employers establish a set pay date for employees, and that the scheduled pay day, as well as the time and location of pay check distribution be posted in a place frequented by employees within all company facilities.

Additionally, the labor code requires payment of wages for non-exempt employees within minimum time frames following the end of each company designated pay period. For employers who pay non-exempt employees on a weekly or a bi-weekly basis, pay day for these employees must be within seven calendar days of the end of the pay period.

Employers who establish their pay period for non-exempt employees as the 1<sup>st</sup> to the 15<sup>th</sup> and the 16<sup>th</sup> through the last day of the month, must set their pay day at least by the 26<sup>th</sup> and the current month, and the 10<sup>th</sup> of the following month respectively.

Employers who pay semi monthly with pay periods established on dates other than the 1<sup>st</sup> to the 15<sup>th</sup> and 16<sup>th</sup> to the last day of the month for non-exempt employees, must have a pay day for those employees within 7 calendar days of the end of each pay period.

Employers are permitted to pay exempt employees once a month, on or before the 26<sup>th</sup> day of the month during which the labor was performed if the entire month's salary, including the unearned portion between the date of payment and the last day of the month, is paid at that time. Otherwise, with few exceptions, exempt employees must be paid twice per month, within the same time frames as non-exempt employees.

Labor code section 210 established the penalty for an employer's failure to pay on a designated pay day, or within the time frames required by law as \$100.00 per employee for the first offense, and \$200.00 per employee per offense for each subsequent offense. Clearly the penalties for failure to pay an employee timely can become significant, and should be sufficient to remind employers of the importance of adhering to posted pay days, as well as adhering to the time limitation established under California labor code.

Some employers have faced the dilemma of insufficient cash flow to fund payroll, and as such have issued paychecks which are subsequently dishonored by the bank. Sometimes company feels that this will avoid the penalties of failure to meet the posted pay day for their employees. However, when a paycheck is dishonored by a financial institution for lack of funds, the employer will be subject to additional penalties as outlined in labor code section 203.1. This section of labor code provides for waiting time penalties in such a situation in the amount of a full day's wages for each day the pay check remains effective unpaid, for each employee who received a dishonored check, for up to a limit of 30 calendar days.