

## When may an exempt salaried employee's pay be reduced?

Wal-Mart Stores, Inc. treats pharmacists as exempt white-collar professionals under the Fair Labor Standards Act (FLSA). Wal-Mart pays them a fixed salary that is based on a two-week schedule of approximately 45 hours a week. The company provides additional pay to pharmacists who work beyond their normal schedules, but the additional pay is less than the FLSA's required time-and-a-half rate because of their exempt status.

### The Case

Consistent with the Department of Labor's (DOL) regulations, Wal-Mart did not deduct from salaries when pharmacists worked less than their expected weekly hours. In some locations, Wal-Mart reduced pharmacists' schedules during periods of business declines, such as seasonal decreases in prescription sales. The company also reduced the pharmacists' salaries during these periods. A group of pharmacists filed suit in federal district court in Colorado and prevailed at the district court level.

The U.S. Court of Appeals for the 10th Circuit reversed the ruling. The 10th Circuit stated, "As a general rule, an employer may prospectively make adjustments in salary with a like adjustment in scheduled hours to accommodate its business needs. If, however, the salary changes are so frequent as to make the salary a functional equivalent of an hourly wage, we will treat the 'salary' as a sham and deny the employer the professional exemption for professional employees."

The exempt status of an employee will not be affected as long as the changes don't occur so frequently that they make the employees the equivalent of hourly employees. In this case, the 10th Circuit found that the frequency of actual adjustments to salary was rare.

### What This Case Means to Counties

The 10th Circuit's opinion does not answer how many salary adjustments are too many. If the frequency of changes makes employees look more like hourly employees, it is best to reconsider your approach. If you have questions, it is best to seek the advice of your labor and employment counsel.

For more information, contact CTSI at 303-861-0507.