

MEMORANDUM

To: PERSONNEL MANAGEMENT LIAISONS

Date: June 2, 1994

Reference Code: 94-32

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Labor Relations Officers
Personnel Officers

From: Department of Personnel Administration
Legal Division
1515 "S" Street, North Building, 4th Floor
Sacramento, CA 95814

Subject: Fair Labor Standards Act Follow-up -- WWG 4C Employees

Recently issued Personnel Management Liaisons (PML) Memoranda (see 94-08, 94-12 and 94-24) regarding employees not covered by the Fair Labor Standards Act (FLSA) have resulted in a number of questions from departments. To assist you in implementing the Work Policy for FLSA Exempt Employees for WWG 4C employees who are either excluded from collective bargaining or represented by the California State Employees Association (CSEA), we have compiled a number of the questions received to date together with our response (see Attachment). As a reminder, this policy is not yet in effect for represented employees in non-CSEA units, as it is subject to continuing negotiations with the exclusive representatives. In addition, the application of this policy to represented employees in attorney and physician classifications is under further review by the Department of Personnel Administration (DPA). For further information on the status of this issue, you can contact the appropriate DPA Labor Relations Officer.

In addition to the attached questions and answers, we would like to address two other areas of continuing concern. First, there has been some confusion regarding the current status of temporary reallocations of employees from WWG 4C to 4A. There has been no change in the directive set forth in PML 94-08 that such reallocations were to end effective April 1, 1994 absent advance approval from DPA. DPA approval of such reallocations was to be granted only if the employees were in classes or positions likely to be permanently reallocated from WWG 4C to WWG 2. Where it is not yet possible to determine the likely permanent WWG, the decision regarding temporary reallocation will be based on the operational need of the requesting department and the adverse impact, if any, of the temporary reallocation.


Departments that are continuing to reallocate employees in the absence of DPA approval are doing so in violation of PML 94-08. DPA will be conducting a review of reallocation activity in the near future in order to determine the level of compliance.

Several departments have expressed concern that ending the ability to temporarily reallocate WWG 4C employees will result in a department's inability to require long or arduous hours. DPA's position is that inherent in appointment to a 4C position is the responsibility and expectation that work weeks of longer duration may be required for which there will be no additional compensation in any form (see question No. 5). Since the WWG 4C concept contemplates that such employees work those hours that are necessary to get the job done, providing overtime compensation to such employees is not and never has been a prerequisite to asking or directing them to work those hours that are necessary to the job, even if those hours are in excess of 40 per week on a regular basis.

The second concern is with the ban on the use of leave banks in partial day increments. Specifically, a desire has been expressed to allow the voluntary use of leave banks to cover partial day absences to avoid the appearance that state time is being used for non-work related reasons. Unfortunately, DOL regulations preclude the use of leave banks to cover partial day absences on a voluntary or discretionary basis. As such, under current law, we cannot allow this practice for employees subject to the salary basis test. However, the FLSA separately excludes from coverage employees who meet both of the following conditions: (1) the employee must not be subject to the civil service laws of the state; and, (2) the employee is selected by a holder of elective office to be a member of his/her personal staff or is appointed by such an office holder to serve on a policy-making level.

Appointees meeting this criteria may continue, at their option, to record partial day absences from work and use their leave banks accordingly.

Should you have questions regarding this information, contact any one of the DPA Labor Relations Officers at (916) 324-0476.



Christopher Waddell
Chief Counsel

Attachment

Attachment

1. How are employees' daily and weekly work schedules determined?

Management has the right to specify the schedule for each employee based on its assessment of legitimate business and operational needs. However, subject to notification and management concurrence, the employee has the flexibility to alter his/her daily and weekly work schedules.

2. May employees continue to work alternate work schedules such as a 4/10/40 or a 9/80?

While these types of work schedules must be discontinued on a formal basis for 4C employees thereby precluding the earning of "excess" time, the work schedule flexibility of salaried employees clearly allows a variety of work schedules mutually acceptable to the employee and the supervisor.

3. What are some examples of legitimate business and operational reasons which could restrict employee schedules?

The following types of responsibilities and assignments represent legitimate business and operational needs:

- a. A public contact unit requiring frequent or regular clarification of State rules or regulations;
- b. A position involving frequent, daily program consultation with management, peers, the legislature, or clients;
- c. A position responsible for providing frequent supervisory/managerial direction regarding work activities;
- d. Assignments requiring immediate emergency response such as law enforcement or fire suppression; and,
- e. Assignments involving regular requests for assistance such as a medical response.

The activities listed above, of course, are not all-inclusive.

4. Does the 4C policy automatically give employees the right to work at home?

No. The employer still retains the right to require the employee to fulfill his/her responsibilities at the designated work site.

5. Is it required that employees work a minimum of 40 hours per week?

It remains State policy that employees work a 40-hour per week schedule unless business operations or service to the public requires different work

schedules or hours as discussed in number 1 above. When an employee is appointed to a WWG 4C class it is expected the work load assigned will normally require approximately 40 hours per week to accomplish. However, inherent in appointment to a WWG 4C position is the responsibility and expectation that work weeks of longer duration may be necessary and for which there will be no additional compensation in any form. This policy does not preclude a supervisor from granting an employee a reasonable amount of informal time off (generally one or two days) immediately following a long and arduous work period of several weeks.

6. When an employee is absent for part of a day, in addition to one or more full days, can paid leave be charged for the partial day?

Partial day absences on two consecutive days may not be charged even if the total equals a full day's absence. If the employee is gone one full day and then a partial day, the only leave credits charged are for the full day absence and not the partial.

It is permissible for different types of paid leave to be used to total a full day; e.g., a full-time employee may use 4 hours of vacation combined with 4 hours of sick leave.

7. Does a full day absence always equal 8 hours or does it vary?

For full-time employees eight hours equals a full day absence. For employees with less than a full-time base, a full day will be calculated on the number of hours that is equivalent to the employee's time base; e.g., 3/4 time equals 6 hours, 1/2 time equals 4 hours, etc. This is true even if the employee is working a schedule other than a 5/8/40 (see number 2 above).

8. If hourly attendance recording may no longer be required for WWG 4C employees, how are supervisors to report paid leaves to the Personnel Office?

Each department should develop a process to be used in reporting absences in full-day increments. Under the FLSA it is permissible to monitor the number of hours spent on projects or activities when these records are maintained for cost accounting (i.e., planning or reimbursement) rather than for payroll-related purposes. In those agencies where the time sheets are currently used for both payroll and cost accounting purposes, a separate process must be developed devoted exclusively to cost accounting needs.

9. Can a 4C employee participate in union leave and be gone for partial days? How should an agency record this time?

This situation is similar to the one described in number 8 above. Union leave is simply another example of an activity that is reimbursable under the terms of the collective bargaining agreement. It is perfectly permissible for a 4C employee to be on union leave for partial or full days and the employing agency may seek reimbursement under the terms of the agreement as in the past.

10. Since 4C employees are not eligible to receive overtime, may they still be reimbursed for "overtime meals"?

Yes, in accordance with applicable DPA Rules and/or contract provisions.

11. If a retired annuitant is employed in a WWG 4C class, should the annuitant be treated the same as active WWG 4C employees?

Yes, the same principles and policies apply to retired annuitants.

12. Are employees eligible for any form of hour-for-hour overtime pay when performing their regular or closely related duties?

NO! Employees are no longer allowed to receive any form of hour-for-hour recognition for hours worked beyond 40 in a week. All formal and informal hour-for-hour recognition is eliminated.

13. Will there be any compensation program to recognize long and arduous hours worked by employees?

Yes, the DPA staff is developing a short-term cash bonus (FLSA Exempt Employee Differential for Declared Emergencies) to recognize sustained long hours put in by employees during emergencies declared by the President and/or Governor.

With respect to rank-and-file employees, application of the Emergency Differential is subject to the bargaining process.

14. With respect to non-represented employees (managers, supervisors, and confidentials), recognizing that 4C employees are not eligible for overtime compensation, what should agencies do with the "unofficial" time currently on the books?

Work Week Group 4C has always required that compensation received is full compensation for all hours worked; in other words, overtime compensation

was not permitted for 4C employees by Laws and Rules. Accordingly, 4C employees have never been eligible to earn overtime despite any "records" maintained by employees, supervisors, or Personnel Offices.

Therefore, for non-represented employees, overtime compensation--whether formal or informal, cash or CTO--is inappropriate and contrary to the provisions of the 4C Work Week Group. If, in fact, compensation has been provided in the past, it was done contrary to State policy. If the practice of your agency is to maintain such records, the practice must cease immediately and employees informed that compensation in any form will not be provided in the future.

For rank-and-file employees, however, this issue is subject to the bargaining process.

15. Will a 4C employee who has been allocated to another WWG in the past, including temporary reallocations, be able to use official CTO or be compensated for it?

Yes. If an employee has official CTO on the books, that time will continue to be available for use consistent with the new 4C policy or, in the event that it is not used, the employee may be compensated for the time consistent with DPA rules and the applicable contract provisions.

16. Does a less than full-time 4C employee get additional compensation for working more hours than their agreed-to time base in a pay period?

No.

17. May 4C employees continue to participate in the personal leave program and the supplemental leave program?

Yes.