

M E M O R A N D U M

Date: August 8, 1994  
Reference Code: 94-45

To: PERSONNEL MANAGEMENT LIAISON

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Personnel Officers  
Labor Relations Officers

FROM: Michael T. Navarro  
Department of Personnel Administration  
Labor Relations Division

SUBJECT: Travel Policy for Employees Covered by FLSA

In February of this year, PML 94-06 was issued discussing proposed implementation of a new travel policy consistent with the requirements of the negotiated agreements and the Fair Labor Standards Act (FLSA). All of the collective bargaining agreements except units 6 and 8 contain the following section:

"Notwithstanding any other contract provision, departmental policy or practice, the travel time of employees who are covered by FLSA shall only be considered as time worked if it meets the definitions and requirements of travel time in Sections 785.34 through 785.41 of Title 29 of the Code of Federal Regulations."

This section requires each department to change all policies and practices to conform with the FLSA travel/overtime requirements. In addition, because this requirement has already been negotiated, there is no notice or meet and confer obligation when a department changes its policies or practices to conform with the Memorandum of Understanding (MOU).

Since PML 94-06 was issued, the Federal Department of Labor has interpreted Section 785.39, which the State must now implement, to require that an employee who is driving while engaged in overnight travel to another city and who was not offered public transportation, be compensated for all driving time.

Departments must immediately modify their travel overtime policies to be consistent with this Federal Department of Labor interpretation. There is no requirement to notice or meet and confer regarding this change because it is already covered by the MOUs and it is a Federal Department of Labor requirement.

In summary, an employee who drives an automobile in the course of State business and who is not offered public transportation, is entitled to compensation. Time spent as a passenger, or driving time that is simply part of the home-to-work or work-to-home commute, is, of course, not compensable.

Should you have questions concerning any of the above, please do not hesitate to contact Bruce Crain on 324-0530 or Michael Navarro on 324-0505.