

State of California

M E M O R A N D U M

DATE: February 14, 2002  
TO: PERSONNEL MANAGEMENT LIAISONS REFERENCE CODE: 2002-009

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Employee Relations Officers  
Personnel Officers  
Personnel Transactions Supervisors

FROM: Department of Personnel Administration  
Labor Relations Division

SUBJECT: California Labor Code 204.3 - Department of Industrial Relations  
Determination

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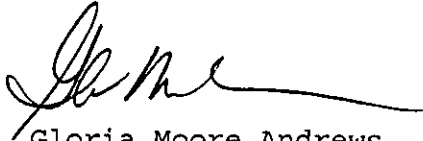
During the 2001 negotiations, the Department of Personnel Administration and the California State Employees Association agreed to request an opinion from the Department of Industrial Relations (DIR) as to whether California Labor Code, Section 204.3 is applicable to employees of the State of California.

Labor Code, Section 204.3 provides limitations to the employer's ability to utilize compensating time off in lieu of cash payment for hours worked over 40 hours in a work week (i.e., overtime compensation). However, subsection (h) provides that Section 204.3 shall not apply to an employee that is exempt from the overtime provision of the California Wage Order.

Attached is the letter from the Director of the DIR, which confirms that State employees are exempt from the overtime provisions of the California Wage Order and thus, exempt from Section 204.3 of the California Labor Code. Also attached is a copy of Labor Code, Section 204.3.

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If you have any questions regarding this issue, please contact  
Julie Chapman, Labor Relations Officer, at (916) 324-9420.



Gloria Moore Andrews  
Chief, Labor Relations Division

Attachment(s)

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January 25, 2002

Anne M. Giese, Chief Counsel  
California State Employees Association  
1108 "O" Street  
Sacramento, CA 95814

Howard Schwartz, Chief Counsel  
Department of Personnel Administration  
1515 "S" Street, North Building, Ste. 400  
Sacramento, CA 95814

Re: Request for Determination Regarding State Compliance with Labor Code 204.3  
Compensating Time Off in Lieu of Overtime

Dear Counsel:

This is in response to the request of the California State Employees Association that the Department of Industrial Relations determine the applicability of the Compensating Time Off in Lieu of Overtime provisions of Labor Code 204.3, as it specifically applies to state workers subject to Wage Order No. 4-2001, professional, technical, clerical and mechanical workers.

As correctly noted in the request for determination, Wage Order No. 4-2001 both applies to professional, technical, clerical and mechanical workers and, in section 3, provides for daily overtime.

However, under Section 1(B), Wage Order No. 4-2001 applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations . . .

(B) Except as provided in Sections 1,2,4,10 and 20, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or district.

Sections 1, 2, 4, 10 and 20 do not provide for daily overtime generally or Compensating Time Off in Lieu of Overtime specifically. Consequently, further amendment of the Labor Code or the Wage Order is necessary before the specific Compensating Time Off in Lieu of Overtime provision can be applied to state employees.

We hope this can be of assistance in your continuing discussions.

Very truly yours,

Stephen J. Smith



204.3. (a) An employee may receive, in lieu of overtime compensation, compensating time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law. If an hour of employment would otherwise be compensable at a rate of more than one and one-half times the employee's regular rate of compensation, then the employee may receive compensating time off commensurate with the higher rate.

(b) An employer may provide compensating time off under subdivision (a) if the following four conditions are met:

(1) The compensating time off is provided pursuant to applicable provisions of a collective bargaining agreement, memorandum of understanding, or other written agreement between the employer and the duly authorized representative of the employer's employees; or, in the case of employees not covered by the aforementioned agreement or memorandum of understanding, pursuant to a written agreement entered into between the employer and employee before the performance of the work.

(2) The employee has not accrued compensating time in excess of the limit prescribed by subdivision (c).

(3) The employee has requested, in writing, compensating time off in lieu of overtime compensation.

(4) The employee is regularly scheduled to work no less than 40 hours in a workweek.

(c) (1) An employee may not accrue more than 240 hours of compensating time off. Any employee who has accrued 240 hours of compensating time off shall, for any additional overtime hours of work, be paid overtime compensation.

(2) If compensation is paid to an employee for accrued compensating time off, the compensation shall be paid at the regular rate earned by the employee at the time the employee receives payment.

(d) An employee who has accrued compensating time off authorized to be provided under subdivision (a) shall, upon termination of employment, be paid for the unused compensating time at a rate of compensation not less than the average regular rate received by the employee during the last three years of the employee's employment, or the final regular rate received by the employee, whichever is higher.

(e) (1) An employee who has accrued compensating time off authorized to be provided under subdivision (a), and who has requested the use of that compensating time, shall be permitted by the employee's employer to use the time within a reasonable period after making the request, if the use of the compensating time does not unduly disrupt the operations of the employer.

(2) Upon the request of an employee, the employer shall pay overtime compensation in cash in lieu of compensating time off for any compensating time off that has accrued for at least two pay periods.

(3) For purposes of determining whether a request to use compensating time has been granted within a reasonable period, the following factors shall be relevant:

(A) The normal schedule of work.

(B) Anticipated peak workloads based on past experience.

(C) Emergency requirements for staff and services.

(D) The availability of qualified substitute staff.

(f) Every employer shall keep records that accurately reflect compensating time earned and used.

(g) For purposes of this section, the terms "compensating time" and "compensating time off" mean hours during which an employee is



not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(h) This section shall not apply to any employee exempt from the overtime provisions of the California wage orders.

(i) This section shall not apply to any employee who is subject to the following wage orders of the Industrial Welfare Commission: Orders No. 8-80, 13-80, and 14-80 (affecting industries handling products after harvest, industries preparing agricultural products for market on the farm, and agricultural occupations), Order No. 3-8 0 (affecting the canning, freezing, and preserving industry), Orders No. 5-89 and 10-89 (affecting the public housekeeping and amusement and recreation industries), and Order No. 1-8 9 (affecting the manufacturing industry).

