

To: Department Heads, Assistant Department Heads
From: Terri Hampton, Deputy Director, Human Resources
RE: Application of overtime for FLSA exempt employees under SEIU General Unit
Date: May 21, 2009

During a regular labor management committee meeting with SEIU general unit, overtime compensation during travel was discussed for FLSA **exempt** employees within the bargaining unit who receive overtime compensation pursuant to a contractual provision. It has come to my attention that overtime for exempt employees who are traveling is calculated and compensated in different ways throughout the County. This memo will clearly describe how travel ought to be compensated for certain employees whose classification is FLSA exempt but who have a contractual right to overtime payment

While typically FLSA exempt employees would not receive time and a half overtime, the County has agreed to pay time and a half overtime to some FLSA exempt employees under the SEIU General Unit contract (hereinafter "MOU"), section 4.2. Attached is a list of all classifications in this bargaining unit that are FLSA exempt and are eligible to receive contractual overtime compensation.

The overtime provision, section 4.2 of the contract states:

Overtime shall be **time worked**: (*emphasis added*)

1. Beyond the standard workday or the employee's established workday, whichever is longer;
2. Beyond the standard workweek or the employees' established workweek, whichever is longer;
3. On holidays. See Article 3.7.6. and 3.7.7

As is the case with all overtime worked in the county, even these FLSA exempt employees must receive prior authorization before working overtime. (See section 4.2.3 of the MOU) Department management is responsible for ensuring that only required overtime hours are approved and worked by the employee.

While it is clear that these employees are entitled to time and a half overtime for time worked, the question remains, which hours are considered "time worked" when traveling? The answer seems simple on its face, but upon closer reflection it is more complicated, as you will see below. If after reviewing the guidelines identified below you determine that the employee's time spent traveling is "time worked" the employee is entitled to base wages and overtime compensation if Section 4.2 identified above is triggered.

The following guidelines will help you to establish if the employee's time spent traveling is considered "time worked". The employee would additionally be eligible for overtime compensation only if section 4.2 of the MOU is triggered.

- 1) If the employee travels on a regular workday, during regular work hours, those hours are considered "time worked" and the employee is entitled to compensation.
- 2) If the employee travels on a weekend, but during their normally scheduled work hours (i.e. works M-F 8 a.m. – 5 p.m. and travels from 3 p.m. – 5 p.m.

on a Sunday) those hours are considered “time worked” and the employee is entitled to compensation.

- 3) If the employee travels on a weekend, but does not travel during normally scheduled hours (i.e. travels at 7 p.m. and typically works from 8 a.m. – 5 p.m.) the time is considered “time worked” only if the employee is personally driving to the location. If the employee is a passenger in a car or a passenger on some other form of transportation, such as a plane, the time is not considered “time worked” and the employee is not entitled to compensation.
- 4) If the employee is a passenger on a plane, train, boat, bus, or automobile and works during that time, the time is “time worked”
- 5) If the employee personally drives, but was offered public transportation and refused the offer, the time is not considered “time worked” and the employee is not entitled to compensation. If no public transportation option was offered, the time is considered “time worked” and the employee is entitled to compensation.

I understand that these guidelines may be confusing. We want to provide departments with assistance understanding these rules so that we can achieve countywide consistency. If you have a situation where you are unsure whether or not the employee’s time spent traveling should be considered “time worked” or you are unsure whether an employee is eligible for overtime compensation, please contact me at 499-7062 or Angela Nicholson at 473-4396 for assistance. We will be happy to help you make that assessment.

As always, thank you for your cooperation.