


DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Wells</i>	DATE <i>3-3-10</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>100370</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>Cleared 3/3/10, signed copy attached.</i> 	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>3-12-10</i>  <input type="checkbox"/> FOIA DATE DUE _____  <input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

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Office of Human Resources

Samuel L. Wilkins  
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MEMORANDUM

TO: Agency Heads of all Agencies, Departments, Institutions of Higher Education, Boards and Commissions

FROM: Jim Holly, Chief of Staff  
Comptroller General's Office *JH*

Samuel L. Wilkins, Director  
Office of Human Resources *SW*

DATE: September 21, 2009

SUBJECT: HR Payroll Issues

1. Multiple agencies currently award compensatory time to employees for hours worked between 37.5 and 40 in a workweek. The federal Fair Labor Standards Act requires generally that nonexempt employees must receive overtime pay or compensatory time for any hours worked over 40 hours in a workweek. In addition, Section 8-11-15 of the South Carolina Code of Laws provides that the minimum fulltime workweek for employees of state agencies and institutions is 37 ½ hours. The Overtime Model Policy issued by OHR states that "employees shall not receive compensatory time for hours worked between 37.5 and 40.0 hours per workweek." Based on this guidance, agency policies should also prohibit this use of compensatory time. Any agencies currently awarding compensatory time incorrectly will need to inform their employees that will be affected by correcting this issue.
2. Multiple agencies may not be paying overtime in a timely manner. According to the Fair Labor Standards Act, overtime compensation must be paid at a rate of not less than one and one-half times the non-exempt employee's regular rate of pay for each hour worked in a workweek in excess of the maximum hours applicable to the type of employment in which the employee is engaged. With the exception of law enforcement and firefighters, this usually means overtime for hours in excess of 40 per week. While there is no requirement under FLSA that overtime compensation be paid weekly, the general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. While there are exceptions addressed in 29 CFR Section 778-106 of the FLSA, it clearly states that "payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next payday after such computation can be made." Any agencies that are currently delaying the payment of overtime beyond these standards need to notify their employees when they correct this issue.

Payroll Issues

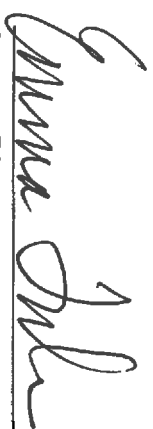
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3. Several agencies that currently pay shift differential to employees are using multiple approaches to award this pay. Shift differential should only be awarded when an eligible employee physically works the shift designated for the differential. No shift differentials should be paid to employees in the statuses of paid leave or holidays. In addition, case law requires that a shift differential is considered compensation that should included in the regular rate of pay for a nonexempt employee when computing overtime payments. Any agencies that are not currently paying shift differentials in this manner should notify their employees when they correct the issue.
4. Some agencies are processing timesheets outside of the payroll periods established by state law. According to Section 8-11-35 of the South Carolina Code of laws, as amended, the payroll periods are the 2<sup>nd</sup> – 16<sup>th</sup> and the 17<sup>th</sup> – 1<sup>st</sup> of each month. Agencies are processing timesheets (including temporary timesheets) on a variety of schedules. For example, an employee submits weekly timesheets. When the agency processes the timesheets, the employee is paid through Friday, August 28<sup>th</sup>, when in fact the employee has worked on Monday, August 31<sup>st</sup> and Tuesday, September 1<sup>st</sup>. The agency then holds payment for these two days until a later payday instead of including the compensation in the appropriate payroll. Any agencies who are not in compliance with Section 8-11-35 should notify their employees when they correct this issue.
5. As to holidays, several agencies that use alternative schedules for employees are not requiring employees to take sufficient leave to cover a flexible schedule day that extends beyond the 7.5/8.0 hours of holiday time the employee is entitled to receive. State Human Resources Regulation 19-708.03D. states "the length of an employee's holiday is computed based on the number of hours in the employee's average workday. To determine the number of hours in a holiday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the days the employee actually reports to work." Therefore, an employee who works a flexible schedule including four 10 hour days in a week would receive 8 hours of holiday time (based on the average workday) and would be required to submit a leave request to cover the additional 2 hours of time on the observed holiday. In addition, agencies who adjust the holidays for their academic calendars must ensure that all employees receive the same number of holidays during the year as other state employees according to the South Carolina Code of Laws and State Human Resources Regulations. Specifically, the regulations state that employees in FTE positions who do not work a normal Monday through Friday workweek shall receive no more nor any fewer number of holidays than those employees who work the normal Monday through Friday workweek. Any agencies that need to correct these issues should notify their affected employees when the changes occur.

Cc: Human Resources Directors  
Payroll Officers

I certify that SCDHHS (agency) is appropriately handling the Human Resources/Payroll issues contained in the memorandum dated September 21, 2009, from the Office of the Comptroller General and the South Carolina Budget and Control Board's Office of Human Resources.

  
\_\_\_\_\_  
Agency Director

3/3/10  
\_\_\_\_\_  
Date