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Date: April 24, 2003

**Code: TECHNICAL LETTER
HR/Salary 2003-03**

To: Human Resources Directors
Payroll Officers

From: Cathy Robinson, Assistant Vice Chancellor
Human Resources Administration

Subject: **Clarification On How To Pay Employees Subject To Fair Labor Standards Act (FLSA) Overtime Provisions When They Work In Multiple Concurrent Positions Or Receive Intermittent Pay Differentials**

Campuses have inquired about overtime payment requirements when non-exempt employees are appointed in multiple concurrent positions or are paid premium payments on an intermittent basis. The purpose of this memo is to review the requirements and clarify how to determine the “regular rate of pay” when calculating overtime.

Background Information: Collective bargaining agreements for represented employees and California State University (CSU) policy for non-represented employees typically define overtime as authorized time worked in excess of forty (40) hours in a designated workweek period. CSU employees are paid under the state pay plan whereby an employee’s monthly salary is paid on the basis of 12, nearly equal pay periods each year. The pay period is called a calendar month and contains either 21 or 22 “normal” workdays (Monday through Friday including holidays during the week).

Under the state pay plan, when a monthly rate employee is paid overtime, the hourly rate equivalent is derived by dividing the employment history base monthly salary rate by 173.33.¹ The hourly rate is then multiplied by the number of overtime hours worked at the overtime factor (e.g., 1.5x) to calculate the overtime payment. When an employee receives additional compensation such as a monthly stipend, the stipend is added to the monthly salary rate to derive the regular rate of pay to

¹ Refer to the State Controller’s Office (SCO) Personnel/Payroll Procedures Manual, Section G. 173.33 is an “hours per month” average, derived by taking 40 hours/week x 52 weeks per year, divided by 12 months ($[40 \times 52 = 2080]/12 = 173.33$).

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Non-Represented Employees:

Employees in Excluded or Confidential classifications do not receive these intermittent pay differentials.

Overtime pay instructions are based upon Fair Labor Standards Act (FLSA) provisions. The following attachments are provided for reference:

- Attachment A: Determining the Regular Rate of Pay and Computing the Overtime Premium
- Attachment B: Paying Multiple Concurrent Positions That Exceed 1.0 Full Time Equivalent (FTE)
- Attachment C: Pay Differentials Paid on an Intermittent Basis
- Attachment D: Payroll Processing Instructions

Questions regarding this technical letter may be directed to systemwide Human Resources at (562) 951-4411. This technical letter is available on Human Resources Administration's Web page at: <http://www.calstate.edu/HRAdm/memos.shtml>. Thank you.

CR/dth
Attachments

**Determining the “Regular Rate of Pay” and
Computing the Overtime Premium**

1. Salary for periods other than a workweek. Where the salary covers a period longer than a workweek, such as a month, the salary must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). [Reference: Code of Federal Regulations section 778.113(b)]
2. Weekly salary. If the employee is employed solely on a weekly salary basis, his/her regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate... If an employee is hired at a salary of \$220.80 for a 40-hour week his regular rate is \$5.52 an hour. [References: Code of Federal Regulations section 778.113(a)]
3. The regular rate is an hourly rate. The “regular rate” under the Fair Labor Standards Act (FLSA) is a rate per hour. The FLSA does not require employers to compensate employees on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission, or other basis, but in such case the overtime compensation due to employees must be computed on the basis of the hourly rate derived therefrom, and therefore, it is necessary to compute the regular hourly rate of such employees during each workweek... The regular hourly rate of pay of an employee is determined by dividing his/her total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him/her in that workweek for which such compensation was paid. [References: Code of Federal Regulations section 778.109]
4. Computing the Overtime Premium: If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his “regular rate.” For his overtime work, he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus, a \$6 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of \$294 (46 hours at \$6 plus 6 at \$3). The employee is entitled to be paid an amount equal of \$6 an hour for 40 hours and \$9 an hour for the 6 hours of overtime, or a total of \$294. [References: Code of Federal Regulations sections 778.110(a)]
5. Hourly Rate and Bonus: If the employee receives, in addition to his/her earnings at the hourly rate, a production bonus of \$9.20, the regular hourly rate of pay is \$6.20 an hour (46 hours at \$6 yields \$276; the addition of the \$9.20 bonus makes a total of \$285.20; this total divided by 46 hours yields a rate of \$6.20). The employee is entitled to be paid a total wage of \$303.80 for 46 hours (46 hours at \$6.20 plus 6 hours at \$3.10, or 40 hours at \$6.20 plus 6 hours at \$9.30). Said differently, the employee’s regular rate of pay is \$6.20 an hour, and

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his/her overtime premium is computed by multiplying one-half of this amount by the six overtime hours: $.5 \text{ of "regular rate"} \times \text{number of OT hours} = \$3.10 \times 6 = \$18.60$. His total compensation for the week is \$303.80 for 46 hours: 46 hours at \$6.20 = \$285.20, plus an additional \$3.10 for 6 of such hours = \$18.60. [References: Code of Federal Regulations sections 778.110(b)]

6. Refer to Section 778.200 of the Code of Federal Regulations to review statutory provisions governing inclusion, exclusion and crediting of particular payments.

Reference:

Title 29 of the Code of Federal Regulations, Office of the Federal Register, Revised July 1, 2002, Sections 778.107 to 778.110; 778.113; and 778.200 to 778.203. Access http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_778/Subpart_B.htm.

**Paying Multiple Concurrent Positions That
Exceed 1.0 Full Time Equivalent (FTE)**

Example #1: An employee works a fulltime position (time base = 1.0) in a non-exempt CSEA classification and an additional (exempt) Lecturer (Faculty/Unit 3) position at a .25 time base. The number of hours correlated with a .25 time base = 10, which represents 25% of 40 hours. Pursuant to CSEA's MOU, overtime must be paid for hours worked in excess of 40 within a workweek period. Overtime can only be paid out of a non-exempt position. As a result, overtime will be paid out of the CSEA position as a result of the employee working the additional Lecturer position. A separate payroll warrant will be generated for each position. The campus will be responsible for determining appropriate department charge-back methods for paying the overtime premium. The full time salary rate for the CSEA position is \$2500 and \$3200 for the Unit 3 Lecturer position.

Step 1: Determine the weekly and hourly rate equivalent for each position:

CSEA monthly salary rate	= \$2500
CSEA weekly rate equivalent	= \$576.92 $([\$2500 \times 12]/52)$
CSEA hourly rate equivalent	= \$14.42 $([\$2500 \times 12]/2080)$; or $(\$2500/173.33)$
Unit 3 monthly salary rate	= \$800 $(\$3200 \times .25 \text{ time base})$
Unit 3 weekly rate equivalent	= \$184.62 $([\$800 \times 12]/52)$
Unit 3 hourly rate equivalent	= \$18.46 $([\$3200 \times 12]/2080)$; or $(\$3200/173.33)$

Step 2: Determine the comparable number of hours worked on a weekly basis from the time base of each position:

CSEA position @ 1.0 FTE	= 40 hours/week
Unit 3 position @ .25 FTE	= 10 hours/week

Step 3: Determine the regular rate of pay for the workweek:

CSEA position weekly rate	= \$576.92
Unit 3 position weekly rate	= <u>\$184.62</u>
	= \$761.54
(FLSA) regular rate of pay	= \$15.23/hr. $(\$761.54/50 \text{ hours})$
Determine overtime premium (FLSA formula)	= $[\.5 \times \text{“regular rate”} \times \# \text{ of OT hours}]$
	= $.5 \times 15.23 \times 10$
	= \$76.15 = weekly overtime premium

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- Step 4: Determine what the employee should be paid each pay period that multiple concurrent appointments are ongoing:
CSEA monthly salary warrant = \$2500
Unit 3 monthly salary warrant = \$800
Monthly overtime **average** = \$329.98 $([\$76.15 \times 52]/12)$
- Step 5: Determine regular rate OT rate = \$22.85 $(\$15.23 \times 1.5)$
Determine “overtime hours”⁵ = 14.44 hours $(329.98/22.85)$
Actual overtime payment = \$329.95 $(\$22.85 \times 14.44 \text{ hours})$
- Step 6: Actual Pay Period Compensation = \$3629.95 $(\$2500 + \$800 + \$329.95)$
- Example #2:** An employee is appointed in two non-exempt CSEA classifications, one at a .75 time base, the other at .5, totaling 1.25 FTE. The employee is regularly scheduled to work 50 hours each week. The full time salary rate for CSEA position # 1 is \$2500, and \$3000 for CSEA position #2.
- Step 1: Determine the weekly and hourly rate equivalent for each position:
CSEA #1 monthly salary rate = \$2500 x .75 = \$1875
CSEA weekly rate equivalent = \$432.69 $([\$1875 \times 12]/52)$
CSEA hourly rate equivalent = \$14.42 $([\$2500 \times 12]/2080)$; or
 $(\$2500/173.33)$

CSEA #2 monthly salary rate = \$3000 x .5 = \$1500
CSEA weekly rate equivalent = \$346.15 $([\$1500 \times 12]/52)$
CSEA hourly rate equivalent = \$17.31 $([\$3000 \times 12]/2080)$; or
 $(\$3000/173.33)$
- Step 2: Determine the comparable number of hours worked on a weekly basis from the time base of each position:
CSEA #1 position @ .75 FTE = 30 hours/week
CSEA #2 position @ .50 FTE = 20 hours/week

Overtime per workweek period = 10 hours/week
- Step 3: Determine the regular rate of pay for the workweek:
CSEA #1 position = \$432.69
CSEA #2 position = \$346.15
= \$778.84
(FLSA) regular rate of pay = \$15.58/hr. $(\$778.84/50 \text{ hours})$

⁵ In order to process payments for overtime performed by employees who work multiple concurrent positions, it is necessary to calculate such payments using the formula set forth in Step 5. Be advised, however, that the “hours” identified in Step 5 are for purposes of calculating the overtime payment only and are not reflective of the actual overtime hours worked.

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- Step 3: Determine overtime premium = $[\.5 \times \text{“regular rate”} \times \# \text{ of OT hours}]$
(cont'd) = $.5 \times 15.58 \times 10$
= \$77.90 = weekly overtime premium
- Step 4: Determine what the employee should be paid for each pay period
that multiple concurrent appointments are ongoing:
CSEA#1 monthly salary warrant = \$1875
CSEA#2 monthly salary warrant = \$1500
Monthly overtime **average** = \$337.57 ($[\$77.90 \times 52]/12$)
- Step 5: Determine regular rate OT rate = \$23.37 ($\15.58×1.5)
Determine overtime hours = 14.44 ($\$337.57/\23.37)
Actual overtime payment = \$337.46 ($\$23.37 \times 14.44 \text{ hours}$)
- Step 6: Actual Pay Period Compensation = \$3712.46 ($\$1875 + \$1500 + \337.46)

Pay Differentials Paid on an Intermittent Basis

Example #1: Shift Differentials:

Shift differentials are includable compensation for the purposes of determining the “regular rate of pay” to calculate overtime. Shift differentials generally are assigned as part of the employee’s regular work schedule and typically are not paid on an intermittent basis. However, in the rare instance when an employee is reassigned to a different shift within a given pay period that results in a higher or lower shift differential rate, the regular rate must be adjusted to calculate the overtime premium.

Example A: In March 2003, a full-time Unit 8 Police Officer on a two (2) week work period, 3/12 schedule, is rotated from the evening shift (.23 cents/hr.) to the graveyard shift (.28 cents/hr.) after completing the first 80 hour workweek period that extended from 12:01 a.m. March 2nd to midnight March 15th. The employee worked 10 hours of overtime between 12:01a.m. March 16th to midnight March 29th, for a total of 90 hours in that workweek period. The employee currently receives the advanced P.O.S.T (\$250/month) and Special Assignment (\$100/month) stipends.

Step 1:	To determine the regular rate of pay for workweek #2:	
	Monthly Salary Rate	= \$4150
	Bi-weekly Rate Equivalent ⁶	= \$1915.38 ([$\4150×12]/26)
	Hourly Rate Equivalent	= \$23.94 ($\$1915.38/80$ hours)
	Monthly Stipend Payments	= \$350
	Bi-weekly Stipend Equivalent	= \$161.54 ([$\350×12]/26)
	Shift Differential Pay	= \$.28 cents/hour
	Hourly Rate x # hours worked	= \$2154.60 ($\23.94×90 hours ⁷)
	Add the Stipend Differential	= \$2316.14 ($\$2154.60 + \161.54)
	Add the Shift Differential	= \$2341.34 ($\$2316.14 + \25.20 ⁸)
	(FLSA) regular rate of pay	= \$26.01/hr ($\$2341.34/90$ hours)
Step 2:	Determine overtime premium	= [.5 x “regular rate” x # of OT hours] = [.5 x 26.01 x 10] = \$130.05

⁶ A bi-weekly rate is determined in this instance because the employee is assigned to a two (2) week work period.

⁷ Includes 80 hours worked in the two (2) week work period plus ten (10) hours of overtime.

⁸ .28 cents x 90 hours = \$25.20

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Determine overtime @10 hours = [regular rate x OT hours]
 = [\$26.01 x 10]
 = \$260.10
 Total Overtime Premium = \$390.15 (\$260.10 + \$130.05)

Step 3: Determine regular rate OT rate = \$39.02 (\$26.01 x 1.5)
 Actual overtime payment = \$390.20 (\$39.02 x 10 hours)

Step 4: The total compensation for the pay period is:
 Monthly salary warrant = \$4150
 P.O.S.T. Stipend = \$250
 Special Assignment Stipend = \$100
 Shift Differential @ .23 cents = \$18.40 (.23 x 80 hours)
 (March 1-15, 2003)
 Shift Differential @ 28cents = \$25.76 (.28 x 92⁹ hours)
 (March 16-31, 2003)
 Overtime premium for workweek #2 = \$390.20
 Actual pay period compensation = \$4934.36

Example #2: Asbestos and Sunday Pay Differentials:

A Building Service Engineer (Unit 6 class code 6702) earns \$4100 per month. In February, the employee was assigned to perform hazardous material handling duties. The employee performed hazardous duty for five hours in the first week when overtime was not assigned. In the second week, the employee performed 12 hours of hazardous duty and the employee was assigned to work 10 hours of overtime. No other overtime was worked in the February pay period. Calculate the Unit 6 Asbestos Pay Differential (\$3.00/hour) for weeks #1 and #2 and indicate how much the employee was paid for the February pay period.

Step 1: If overtime is not assigned during the same workweek period that an employee performs special duties, the differential is paid at the rate specified for the number of hours worked:

Differential for week #1 = \$15.00 (\$3 x 5 hours)

Step 2: If overtime is assigned during the same workweek period that an employee performs special duties, the differential must be incorporated into the weekly rate equivalent to establish the regular rate of pay to calculate overtime for that workweek period:

⁹ 92 hours = one eighty (80) hour workweek plus one twelve (12) hour day for 3/31/03.

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To determine the regular rate of pay for workweek #2:

Monthly Salary Rate = \$4100
Weekly Rate Equivalent = \$946.15 ($[\$4100 \times 12]/52$)
Hourly Rate Equivalent = \$23.65 ($\$946.15/40$)
Asbestos Differential Pay = \$36.00 ($\3×12 hours)
Hourly Rate x # hours worked = \$1182.50 ($\23.65×50 hours)
Add the Differential = \$1218.50 ($\$1182.50 + \36)

(FLSA) regular rate of pay = \$24.37/hr ($\$1218.50/50$ hours)

Step 3: Determine overtime premium = $[.5 \times \text{“regular rate”} \times \# \text{ of OT hours}]$
= $[.5 \times 24.37 \times 10]$
= \$121.85
Determine overtime @10 hours = [regular rate x OT hours]
= $[\$24.37 \times 10]$
= \$243.70
Total Overtime Premium = \$365.55

Step 4: Determine regular rate OT rate = \$36.56 ($\24.37×1.5)
Actual overtime payment = \$365.60 ($\36.56×10 hours)

Step 5: The total compensation for the February pay period is:
Monthly salary warrant = \$4100
Asbestos Differential = \$51.00 ($\3×17 hours)
Overtime premium for week #2 = \$365.60
Actual pay period compensation = \$4516.60

Example #3: Emergency Pay Provisions:

CSEA and Unit 6 Emergency Pay provisions provide that a non-exempt employee receive emergency pay of an additional one-half hour for each hour worked in an emergency situation up to forty hours per week. In terms of pay, this means that the employee will be paid an additional half-time premium for hours worked under emergency pay during the employee's normal shift. Hours worked in addition to forty per week shall be paid at time and one-half. If emergency work is performed during the normal shift and overtime also is worked during that workweek period, the half-time premium applied to the number of hours worked under emergency pay is includable compensation when determining the regular rate of pay for that workweek period. If no overtime is worked during the workweek an employee is paid under the emergency pay provision, the employee would receive premium pay at half-time of their hourly rate equivalent for the corresponding number of emergency hours worked.

Clarification Concerning “Call Back Pay” Provisions:

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Call back time is not included in the regular rate of pay for the purposes of calculating overtime pursuant to FLSA section 778.202[b]. Call back pay provisions are treated differently based upon the bargaining unit agreements as noted below:

Under the CSEA, Unit 6, Unit 8 and Unit 10, Call Back provision “call back work” is work performed at a time outside of and not continuous with the employee’s regular work schedule.

For Units 6 (Article 23) and 10 (Article 12), only the hours worked are counted as time worked for the purposes of computing overtime. In this instance, if an employee works his/her normal weekly shift and also works 4 hours under the call back provision, 4 hours of overtime would be paid at time and one-half, and no change is required to the regular rate of pay. Call back hours not worked but to which the employee is entitled pursuant to the respective Collective Bargaining Agreement, are credited or paid at the straight time rate. Such hours are not considered as includable compensation if overtime is worked within the same workweek period.

Pursuant to CSEA’s Article 19, an employee called back to work is paid at the overtime rate for no less than three (3) hours, unless such call-back is within 3 hours of the beginning of the employee’s next shift, in which case the employee shall only be paid for the hours remaining before the beginning of the employee’s next shift. In this instance, if an employee works his/her normal weekly shift and also works 4 hours under the call back provision, 4 hours of overtime would be paid at time and one-half, and no change is required to the regular rate of pay.

Pursuant to Unit 8’s Article 13, an employee called back to work shall receive no less than 3 hours pay or compensatory time off at the appropriate rate of pay unless such call-back is within three hours of the beginning of the employee’s next shift, in which case the employee shall only be paid for the hours remaining before the beginning of the employee’s next shift. Only the hours worked are counted as time worked for the purposes of computing overtime. Call back hours not worked but to which the employee is entitled, are credited at the straight time rate. Such hours are not considered as includable compensation if overtime is worked within the same workweek period.

Clarification Concerning Holiday Work Compensation:

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Several bargaining agreements include a Holiday Pay/Holiday Work compensation provision that requires an employee to be compensated at a premium rate if the employee works on the day a holiday is officially observed. Pursuant to 778.203 and 778.219 of the Code, this premium rate is not includable compensation for the purposes of calculating overtime.

Payroll Processing Instructions

This attachment is intended to assist payroll staff in determining the payroll mechanisms by which an employee would be paid from the examples previously provided:

Attachment B, Example #1:

Three (3) warrants would be generated for this pay period, consisting of:

- master payroll warrant for CSEA position = \$2500
- master payroll warrant for Faculty position = \$800
- PIP payment for overtime @ "OF6"¹⁰ [\$15.23] x 14.44 hours = \$329.95

Attachment B, Example #2:

Three (3) warrants would be generated for this pay period, consisting of:

- master payroll warrant for CSEA position #1 = \$1875
- master payroll warrant for CSEA position #2 = \$1500
- PIP payment for overtime @ "OF6" [\$15.58] x 14.44 hours = \$337.46

Attachment C, Example #1:

Six (6) payments would be generated for this pay period, consisting of:

- master payroll warrant for Police Officer position = \$4150
- PIP payment for POST stipend @ "8ST8" = \$250
- PIP payment for Special Assignment stipend @ "8ST9" = \$100
- PIP payment for .23 cents shift differential "SRE" x 80 hours = \$18.40
- PIP payment for .28 cents shift differential "SRN" x 92 hours = \$25.76
- PIP payment for overtime @ "OF6" [\$26.01] x 10 hours = \$390.20

Attachment C, Example #2:

Three (3) payments would be generated for this pay period, consisting of:

- master payroll warrant for Building Service Engineer position = \$4100
- PIP payment for Asbestos Differential "8AB" x 17 hours = \$51.00
- PIP payment for overtime @ "OF6" [\$24.37] x 10 hours = \$365.60

¹⁰ Earnings ID code "OF6" is used when the hourly rate is manually calculated and entered on the PIP. The overtime factor for code OF6 is 1.5. Refer to Section G of the State Controller's Payroll Procedure Manual for additional information.