



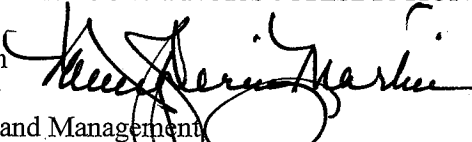
Commonwealth of Pennsylvania
Office of Administration

Human Resources and Management

DATE: August 26, 2004

SUBJECT: New FLSA Regulations
Suspensions Without Pay for Exempt Employees

TO: ALL HUMAN RESOURCE DIRECTORS OF ALL
DEPARTMENTS, INDEPENDENT ADMINISTRATIVE
BOARDS AND COMMISSIONS AND OTHER STATE
AGENCIES UNDER THE GOVERNOR'S JURISDICTION

FROM: Nancy Dering Martin 
Deputy Secretary for
Human Resources and Management

In a memorandum dated January 20, 1998, we informed you of the suspension without pay policy for employees exempt from the overtime provisions of the Fair Labor Standards Act (FLSA). The memo stated that exempt employees should not be suspended without pay for periods of less than full workweeks, or the agency would risk the exempt status of the employee being lost, causing the employee to be eligible for premium overtime for hours worked over 40 per week. For example, if an FLSA-exempt employee committed an infraction in the middle of the workweek, the employee could not be suspended without pay until the start of the following week. The only exception to the policy was if the employee violated a major safety rule, in which case the FLSA regulations permitted suspensions without pay for less than a full workweek. For Commonwealth purposes, FLSA-exempt employees are those ineligible for time and one-half overtime for hours worked over 40 in a workweek; for example, most management employees, and most union-covered employees assigned to Pay Scale Group 8 or above.

Effective August 23, 2004, the U.S. Department of Labor adopted new regulations that govern the enforcement of the FLSA. **The new regulations allow exempt employees to be suspended without pay for one full day or more for infractions of additional categories of workplace conduct rules.** The additional categories include, but are not limited to, Commonwealth policies on workplace violence, sexual harassment, substance abuse, and internet access. Violations of major safety rules continue to be included. The new FLSA regulations do not, however, allow exempt employees to be suspended without pay for less than full workweeks for attendance-related issues or job performance reasons. Suspensions without pay of exempt employees for reasons other than those covered by the new FLSA regulations must continue to be in increments of full workweeks. If you are uncertain whether a workplace conduct rule is covered under the new FLSA regulations, please contact the Office of Administration, Salary and Time Administration Division.

Though the U.S. Department of Labor made changes to the FLSA regulations effective August 23, 2004, beyond that noted above, we do not feel that those other changes have a significant impact on the Commonwealth. The Office of Administration will continue to monitor those changes, and you will be advised if any further changes to Commonwealth policy are required.

If you have any questions, please contact the Salary and Time Administration Division at 783-8141.

cc: Secretary Barnett
Ronald Blough