

MEMORANDUM OF LAW

DATE: January 20, 1994

TO: Jerry Fort, Deputy Director, Personnel Department

FROM: City Attorney

SUBJECT: Overtime Calculations Under California Statutes

Recently, a payroll guide published by Warren Gorham Lamont indicated that California wage and hour laws calculate overtime on hours worked in excess of eight (8) per day without regard to the Federal forty (40) hour per week law mandated by the Fair Labor Standards Act ("FLSA"). You have asked if this is a correct reading of the law.

California Labor Code section 510 provides:

Eight hours of labor constitutes a day's work, unless it is otherwise expressly stipulated by the parties to a contract. Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle owned, leased, or subsidized by the employer used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code. Nothing in this section shall be construed to affect, change, or limit an employer's liability under the workers' compensation law.

While the statute indicates that eight (8) hours is considered a day's work, it does not address the issue of overtime. Nor does the statute indicate that it is intended to preempt the FLSA.

The FLSA was adopted by Congress in 1937 and became applicable to public sector employers in 1985 by the Supreme Court's decision in *Garcia v. San Antonio Metro.*, 83 L.Ed 2d 1016 (1984). The courts have consistently indicated that by the adoption of the FLSA.

Congress intended, . . . to achieve a uniform national policy of guaranteeing compensation for all work or employment engaged in by employees covered by the Act. Any custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights.

Tennessee C. I. & R. Co. v. Muscoda Local 123, 88 L.Ed 949, 959 (1943).

Since California statutes are silent on how overtime is to be computed and because the statutory authority for the eight (8) hour workday does not conflict with or contradict the FLSA, the City should continue to use the parameters of the FLSA when addressing overtime issues.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:300(x043.2)

ML-94-8

TOP

TOP