



February 1, 2005

**MEMORANDUM:**

**TO:** DFCS Regional Directors  
DFCS County Directors

**FROM:** Steve Love, Acting Director  
Division of Family and Children Services  
  
Rosa D. Waymon, Director  
Office of Human Resource Management and Development

**SUBJECT:** Fair Labor Standards Act (FLSA)

The Division of Family and Children Services continues to experience heavy workloads coupled with high turnover in a number of jobs. Staff members have responded in a positive manner as they continue to provide effective services to clients. We are very optimistic that new initiatives will continue to offer relief for workload and turnover concerns. In the meantime, however, it is critical that we ensure full compliance with the overtime provisions of the Fair Labor Standards Act (FLSA).

While we are sure that most of you are familiar with the basic provisions of the FLSA, we would like to emphasize certain requirements specifically dealing with non-exempt employees, i.e., those who are covered by the overtime provisions of the FLSA.

- Non-exempt employees who work in excess of 40 hours during their designated work periods **must** receive time and a half FLSA compensatory time for the amount of overtime worked.
- Non-exempt employees who have accrued FLSA compensatory time **must** be permitted to use this time within a reasonable period after making the request, as long as the time off does not unduly disrupt the operation of the office.
- Non-exempt employees may accrue no more than 240 hours of FLSA compensatory time (160 overtime hours); they must receive overtime payment for any overtime worked that would otherwise cause accrued FLSA compensatory time to exceed 240 hours.

Actual time worked includes all time non-exempt employees are required to be on duty at prescribed work places, and all time during which non-exempt employees are "suffered or permitted" to work. This means that non-exempt employees must be compensated for all time which supervisors know or have reason to know is being worked, not simply the time for which non-exempt employees have been required or asked to work.

Supervisors cannot ignore work that non-exempt employees do "on their own time". Non-exempt employees are **required** to report all time worked. If non-exempt employees are working additional hours beyond the required 40 hours in a designated work period, this must be reported and FLSA compensatory time must be granted.

We must be mindful that failure to adhere to the provisions of the FLSA can result in the entire Division of Family and Children Services and/or Department of Human Resources being subject to investigation by the U. S. Department of Labor. Violations of the FLSA can result in significant liability for the Department, not only in the payment of back wages for overtime, but also in civil money penalties if it is found that violations are willful. We emphasize the need for, and expectation of, full accountability on the part of every director, manager and supervisor for this issue. OHRMD will be initiating an audit process for compliance review, but the primary responsibility for compliance rests with you.

Please share this information with appropriate management and supervisory staff in your office to ensure that these provisions are being followed. If you have specific questions about provisions of the FLSA and its application, you may call Mary Walker, Rebecca Burton, or Gary Nagel in the Office of Human Resource Management and Development.

SL/RDW:dfn

c: Mr. Cliff O'Connor  
Ms. Lynn Robinson  
Ms. Gwen Bailey  
Mr. Gary Nagel  
Ms. Rebecca Burton  
Ms. Mary Walker