

EXECUTIVE ORDER NO. 103 NOTICES

CIVIL SERVICE COMMISSION

Notice of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103

(2020)

COVID-19 State of Emergency

Regulatory Provisions Concerning 40 Hours or Less in a Workweek

Special Circumstances: State Service

N.J.A.C. 4A:3-5.3 and 5.7

Authorized: April 29, 2020, by Deirdré L. Webster Cobb, Esq., Chair/Chief Executive Officer.

Authority: N.J.S.A. App.A:9-45 and App. A:9-47; and Executive Order No. 103 (2020).

Effective Date: April 29, 2020.

Expiration Date: Upon the Termination of the Emergency Declaration Made Pursuant to Executive Order No. 103 (2020).

This is an emergency adoption of temporary rule relaxations and modifications of the regulatory provisions concerning 40 hours or less in a workweek, State service (N.J.A.C. 4A:3-5.3) and Special circumstances: State service (N.J.A.C. 4A:3-5.7). Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Civil Service Commission is relaxing or modifying its rules as follows:

Department of Children and Families

As a result of the Coronavirus-19 (COVID-19) pandemic, State departments and agencies have been directed to prioritize addressing immediate public needs and safety, while also to restrict the physical presence of individuals in office environments and work sites. The Division of Child Protection and Permanency (DCPP) in the Department of Children and Families is tasked with the critical mission of protecting children, which requires, among other things, the prompt initiation of investigations within 24 hours of receipt of a report of child abuse/neglect. These investigations necessarily involve in-person visits to people's homes and to a variety of community settings, e.g. hospitals, childcare centers and police stations. And once a family enters the DCPP system, the agency is required to conduct monthly in-person home visits.

The COVID-19 crisis has impacted the DCPP's work in critical ways. The prevalence of the virus in the general public places field workers at increased risk of infection. Thus, in order to maintain its essential functions, while also abiding by protocols restricting movement to the extent possible to curtail the epidemic, DCPP is temporarily restructuring job duties within its agency. Under this restructuring, each of DCPP's nine geographical areas will be served by a special response team dedicated solely to conducting investigations and home visits to high risk families. As a result, the day-to-day job duties of these team members have materially changed, both in terms of the focus on field work and the enhanced risk involved.

Department of Human Services

Similarly, the COVID-19 crisis has impacted the Department of Human Services, Division of Developmental Disabilities (DDD). The Division operates five developmental centers for adult individuals with intellectual and developmental disabilities who require 24 hour a day, seven day a week care and oversight, including many individuals with significant underlying physical health conditions and behavioral health needs, which are heightened due to social distancing policies that restrict family visits and recreational activities. Many individuals require assistance with daily activities such as toileting, feeding and showering that require staff to have frequent direct contact with individuals' bodily fluids. The critical staff necessary to do this work serve in NE and NL titles, including direct care and housekeeping staff, who complete cleaning and disinfection needed to prevent the spread of the virus, and food service staff who work directly in clients' cottages (residential areas). The prevalence of the virus in the general public and the limited ability for the clients to protect against spread themselves, the reliance on DDD staff to assist the clients in mitigating against the virus and its spread places these DDD workers at increased risk of infection, and thus materially changes the nature of their jobs.

Department of Labor and Workforce Development

The Department of Labor and Workforce Development has experienced unprecedented demand in the areas of income security (unemployment insurance) and disability determination services, which has materially changed the scope of work performed by essential employees in the Divisions of Income Security, Disability Determinations, Information Technology and Finance and Administration. Specifically, the Division of Income Security has seen a dramatic increase in the number of unemployment claims (1500% +) as a result of the closings of businesses in the State during the national emergency declared by the President or State emergency declared by the

Governor related to the COVID-19 emergency. The Division of Disability Determination Services (DDS) is responsible for making Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) on behalf of the federal Social Security Administration. The rendering of essential services in a timely and efficient manner is of the utmost importance to get income to State residents as soon as possible. The overtime hours worked by the DDS is directly related to processing Disability Hearing determinations, initial claims and other priority workloads assigned to the Social Security Administration during this COVID-19 pandemic. The Division of Information Technology has been a critical component of the Department of Labor's COVID-19 response. Its employees have worked 24/7 to maintain the Unemployment Insurance system which has received an unprecedented number of claims as well as widening the customer access window to permit more hours per day for citizens to submit claims. Lastly, the Division of Finance and Administration has been doing COVID-19 analysis of funding availability, funding transfers, to support procurement of laptops and technology that was necessary in order to expand telecommuting capabilities. Additionally, significant time is being spent addressing workflow procedures, responding to OMB and executive requests, responding to business area requests, processing the payments, and approving procurement activities.

Therefore, since certain employees in these specific NE and NL Family Service Specialist title series in the Department of Children and Families, Division of Child Protection and Permanency and direct care and service titles in the Department of Human Services, Division of Developmental Disabilities and the Department of Labor and Workforce Development, Division of Income Security, Disability Determinations, Information Technology and Finance and Administration have experienced unprecedented demand in providing essential services to the

public, which has materially changed the scope of work performed by essential employees, within these agencies, the Commission is relaxing its rule to allow department heads to permit cash overtime compensation at one and one-half times the regular rate for hours worked between 35 and 40 hours for certain employees.

Full text of the modified rule text follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 5. OVERTIME COMPENSATION

4A:3-5.3 40 hours or less in a workweek: State service

(a)-(c) (No change.)

(d) Overtime compensation under this section shall be paid as follows:

1. (No change.)

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation. [In] **Except as described below, in** no event shall employees in non-limited titles have any entitlement to cash overtime compensation.

i. During the period of March 28, 2020, to the expiration of the Public Health Emergency declared for COVID-19, employees who conduct in home and community child abuse and neglect investigations in the Department of Children and Families, Division of Child Protection and Permanency, COVID-19 Impact Team, and employees in direct care and service titles in the Division of Developmental Disabilities are eligible to receive cash overtime at one and one-half times the regular rate for hours worked between 35 and 40 hours per workweek. Applicable employees must receive approval from their Department heads to receive overtime under this subparagraph.

ii. During the period of March 28, 2020, to the expiration of the Public Health Emergency declared for COVID-19, employees with increased workloads directly related to COVID-19 response in the Department of Labor and Workforce Development Divisions of Income Security, Disability Determinations, Information Technology, and Finance and Administration are eligible to receive cash overtime at one and one-half times the regular rate for hours worked between 35 and 40 hours per workweek. Applicable employees must receive approval from their Department heads to receive overtime under this subparagraph.

3.-4. (No change.)

4A:3-5.7 Special circumstances: State service

(a)-(c) (No change.)

(d) Eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. When an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, he or she may authorize:

i. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 32 performing emergency related work. [For] **Except as described below, for** these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.

ii. During the period of March 28, 2020, to the expiration of the Public Health Emergency declared for COVID-19, employees who conduct in home and community child abuse and neglect investigations in the Department of Children and Families, Division of Child Protection and Permanency, COVID-19 Impact Team, and direct care and service titles in the Division of Developmental Disabilities are eligible to receive cash overtime at one and one-half times the regular rate for hours worked between 35 and 40 hours per workweek. Applicable employees must receive approval from their Department heads to receive overtime under this subparagraph.

iii. During the period of March 28, 2020, to the expiration of the Public Health Emergency declared for COVID-19, employees with increased workloads directly related to COVID-19 response duties in the Department of Labor and Workforce Development Divisions of Income Security, Disability Determinations, Information Technology, and Finance and Administration are eligible to receive cash overtime at one and one-half times the regular rate for hours worked between 35 and 40 hours per workweek. Applicable employees must receive approval from their Department heads to receive overtime under this subparagraph.

2.-3. (No change.)

(e) (No change.)