



STATE OF NEW JERSEY

In the Matter of Office of the Chief
State Medical Examiner, Department
of Health

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-502

Administrative Appeal

ISSUED: October 12, 2022 (SLD)

The Department of Health (DOH) requests that the provisions of *N.J.A.C.* 4A:3-5.7(d) to establish a daily rate for certain individuals in exempt non-limited (NL) titles for hours worked on weekends and holidays, outside of their normal work hours.

In this matter, the DOH requests permission to establish a Medical Examiner Officer of the Day (MEOD) rate for the Office of the Chief State Medical Examiner (Office) as a salary incentive for certain employees in the Office. Specifically, it maintains that the Office is severely understaffed and it needs the ability to compensate certain employees who are required to work beyond their normal work hours on weekends and holidays. The DOH maintains that the proposed MEOD rate is \$1,053.46, which it based upon the current maximum annual salary of \$275,000 for the title of Associate Medical Examiner. The DOH argues that the incentive will assist the Chief Medical Examiner in providing critical coverage on shifts that are understaffed and will assist with the retention of employees. In support, it submits a list of the affected unclassified employees as follows:

Name	Title	Salary
Albert Williams	Associate Medical Examiner*	\$249,900
Nicole Harvilla	Associate Medical Examiner	\$180,000
Gregory Conti	Assistant Medical Examiner	\$206,317.44
Andrew Falzon	Chief State Medical Examiner**	\$301,875
Frederick Dicarlo	Deputy Chief State Medical Examiner**	\$283,400
Alex Zhang	Deputy Chief State Medical Examiner	\$283,400

*Salary Range W-98.
**Salary Range M-98.

Based on these circumstances, the Division of Agency Services indicated its support of DOH's request.

CONCLUSION

N.J.A.C. 4A:3-5.3 provides in pertinent part that:

- (a) Employees in the following groups may be eligible for overtime compensation for work performed beyond their regular work hours, but not more than 40 hours:

* * *

- 3. Employees in non-limited titles (NL, NE) who meet unusual work time requirements, at the discretion of the appointing authority.

* * *

- (c) An employee shall be eligible for overtime compensation under this section only when:

- 1. The employee is in pay status for the full number of hours in his or her regular workweek;
- 2. The employee works at least one hour beyond the regular workweek or approved alternative workweek program of 70 hours in a 14 day work period, for employees in 35 hour fixed workweek titles (35, 3E); and
- 3. The work is covered by the job specification for the employee's title, except for emergencies as provided in *N.J.A.C.* 4A:3-5.7(d).

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

* * *

- 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 no event shall employees in non-limited titles have any entitlement to cash overtime compensation.

N.J.A.C. 4A:3-5.6(a)3 provides, in pertinent part, that employees in NL titles shall not be eligible for cash overtime compensation, except as provided in *N.J.A.C.* 4A:3-5.7(d). *N.J.A.C.* 4A:3-5.7(d) provides, in pertinent part that, 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 these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.
 - ii. Overtime compensation for work not covered by the job specification. *See N.J.A.C.* 4A:3-5.3(c)3.

N.J.A.C. 4A:3-5.2 defines “Cash overtime compensation” as payment at a rate of one and one-half times the hourly proration of the employee's base salary, or one and one-half times the employee's regular rate, as specified.

N.J.A.C. 4A:3-5.7(e)2 provides, in pertinent part that, eligibility for special project rate compensation for NL employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the Chairperson.

N.J.A.C. 4A:1-1.2(c) provides that a rule may be relaxed for good cause, in a particular circumstance, in order to effectuate the purposes of Title 11A of the New Jersey Statutes Annotated.

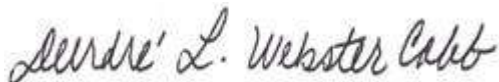
Initially, although the DOH requests permission to relax the provisions of *N.J.A.C.* 4A:3-5.7(d), it has not established that there has been or is an ongoing exceptional emergency which would entitle the certain NL employees to cash overtime compensation. Moreover, the DOH is *not* requesting permission to pay the named NL employees cash overtime compensation as defined by *N.J.A.C.* 4A:3-5.2. Rather, it is requesting permission for a special project rate compensation pursuant to *N.J.A.C.* 4A:3-5.7(e)2. In this regard, the DOH maintains that due to a lack of adequate staffing, the above-noted employees are being required to work additional hours, outside of their normal schedules on weekends and holidays in order to ensure proper coverage. Therefore, based on these extraordinary work requirements it is appropriate to establish a special project compensation rate for the above noted employees at a daily rate of \$1,53.46. It is noted that this determination is based on the specific facts and circumstances presented and **shall not** be used as precedent for any future matter.

ORDER

Therefore, it is ordered that a special project daily rate of \$1,053.46 be provided for holidays and weekends worked as the Medical Examiner Officer of the Day, outside of the employees' normal schedule.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF OCTOBER, 2022



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit

P.O. Box 312
Trenton, New Jersey 08625-0312

c: Loreta Sepulveda
Division of Agency Services