

**Date:** August 1, 2016

**To:** Human Resource Directors and Designees

**From:** Edwin Hudson, Deputy Commissioner

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**Subject:** Reminder about FLSA Workweeks

As part of our continuous improvement efforts, MMB is working to ensure consistency and efficiency around statewide payroll processing. On July 8, we introduced a new “FLSA Schedule” page in SEMA4 and asked you to review and/or set the appropriate Fair Labor Standards Act (FLSA) workweek schedule for non-exempt employees in the system. As you are reviewing workweek schedules, please take this opportunity to remind managers and supervisors of an important FLSA rule:

**When non-exempt employees on a 7-day FLSA workweek schedule work over 40 hours in the workweek, we must pay them FLSA overtime. Non-exempt employees cannot ‘balance’ hours across workweeks during the same payroll period without incurring overtime.**

### **What is an FLSA “workweek”?**

FLSA overtime is calculated on a workweek basis. An FLSA “workweek” is not the same thing as an employee’s Monday through Friday weekly work schedule – rather, it is a fixed period of 7 days, or 168 consecutive hours, used for counting hours of work for FLSA purposes.

Unless your non-exempt employees meet certain criteria (and unless you have established a different FLSA Schedule for your non-exempt employees on the FLSA Schedule page in SEMA4), non-exempt state employees have a 7-day workweek that begins on Wednesday at 12:01 a.m. and ends on Tuesday at Midnight.

### **Who is a ‘non-exempt’ employee?**

The FLSA establishes the criteria for “exempt” and “non-exempt” job duties, and MMB determines FLSA status for each Job Class. For Job Classes that MMB has designated as “Mixed” FLSA status, the employing agency is responsible for determining FLSA status on a position-by-position basis.

To review an employee’s FLSA status in SEMA4, go to the Position tab, and the field is on the Barg Unit/Cost Projection page.

**When must we pay overtime?**

The FLSA defines ‘overtime’ slightly differently than how it is defined in our state contracts and compensation plans. We have an obligation to make sure that both FLSA and contractually-based overtime rules are met, and to pay whichever overtime amount is higher.

With the limited exceptions of employees in law enforcement and working at care facilities, the FLSA requires that overtime be paid whenever non-exempt employees work over 40 hours **within the FLSA workweek assigned to them.**

- **The FLSA does not permit ‘balancing’ or ‘averaging’ hours across workweeks, even within the same bi-weekly payroll period.** If employees work more than 40 hours during the 7-day FLSA workweek that has been assigned to them, overtime is due.
- Employees cannot agree by contract or otherwise to waive their right to be paid FLSA overtime when they work over 40 hours within their FLSA workweek.

**Examples of worked hours that will result in the payment of FLSA overtime**

**Example 1**

<u>Earn Code</u>	<u>Earnings Total</u>	<u>(WED)</u>	<u>(THU)</u>	<u>(FRI)</u>	<u>(SAT)</u>	<u>(SUN)</u>	<u>(MON)</u>	<u>(TUE)</u>	<u>(WED)</u>	<u>(THU)</u>	<u>(FRI)</u>	<u>(SAT)</u>	<u>(SUN)</u>	<u>(MON)</u>	<u>(TUE)</u>
REG	80.00	8.00	8.00	8.00			7.50	9.00	8.00	7.50	8.00			8.00	8.00

**.5 FLSA Overtime owed during workweek 1**

**Example 2**

<u>Earn Code</u>	<u>Earnings Total</u>	<u>(WED)</u>	<u>(THU)</u>	<u>(FRI)</u>	<u>(SAT)</u>	<u>(SUN)</u>	<u>(MON)</u>	<u>(TUE)</u>	<u>(WED)</u>	<u>(THU)</u>	<u>(FRI)</u>	<u>(SAT)</u>	<u>(SUN)</u>	<u>(MON)</u>	<u>(TUE)</u>
REG	80.00	8.00	8.00	8.00			8.00	13.00	6.50	8.00	7.50			5.00	8.00

**5 hours FLSA Overtime owed during workweek 1**

## **What resources are available to help my managers and supervisors navigate FLSA issues and questions?**

Agency HR and Payroll staff will be able to answer most questions regarding FLSA designations, workweeks, and the calculation of FLSA overtime. Subject matter experts at MMB are available to offer assistance to agency HR and Payroll staff as needed within their areas of expertise. Links to MMB customer service agency assignments are below.

[Statewide Payroll Services](#)

[SEMA4-HR Transactions](#)

[Agency / Applicant Services](#)

In addition, as part of our continuous improvement efforts to ensure that agency HR and payroll staff, managers, and supervisors have the tools and training necessary to determine what the FLSA allows and requires, MMB is taking the following steps:

- Introduction of FLSA Reconciliation Report (coming summer 2016)
- Increased training on FLSA in Managerial Core and Supervisory Core
- Adding FLSA resource materials and guidance to the MMB Extranet (HR toolbox)
- Role-specific training to SEMA4 transaction user-groups and quarterly Payroll meetings
- Agency-specific training (by request) on FLSA issues or questions
- Creating materials for improved understanding of FLSA for use during onboarding
- Development of an Earn Code user guide for employees, supervisors, managers, and payroll staff
- Reviewing and revising existing FLSA policies and procedures to improve users' understanding