

JUL 17 1995

Dear

This is in response to your letter requesting an opinion concerning the use of compensatory time under the Fair Labor Standards Act (FLSA) by nonexempt employees at Community College.

Based on a conversation with _____ of my office, you state that you could allow your nonexempt employees to use compensatory time in lieu of pay at the rate of one and one-half times for each hour worked. Since _____ Community College is a public institution, it falls under the amendment to the FLSA that allows public employees to receive compensatory time off for working FLSA overtime.

As you know, the Wage and Hour Division of the Department of Labor administers and enforces the FLSA, the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees must be paid a minimum wage of \$4.25 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

With regard to the application of the FLSA to State and local government employees, please note that as a condition for use of compensatory time in lieu of overtime payment in cash, section 207(o)(2)(A) of the FLSA requires an agreement or understanding be reached prior to the performance of work. This can be accomplished pursuant to a collective bargaining agreement, a memorandum of understanding or any other agreement between the public agency and representatives of the employees. The application of the FLSA to public employees is fully explained in

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Regulations, 29 CFR Part 553 (copy enclosed). The compensatory time off provisions are found at sections 553.20 - .28.

We trust that the above information is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosure