STATE OF CALIFORNIA PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Labor Standards Enforcement
Legal Section
455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102

January 21, 1992

Robert M. Pattison, Esq.
Jackson, Lewis, Schnitzler & Krupman
525 Market Street, Suite 3400
San Francisco, CA 94105-2742

Re: **Alternative Schedules for Health Care Registry Workers**

Dear Mr. Pattison:

Your letter to Victoria Bradshaw, State Labor Commissioner, dated December 16, 1991, requesting an administrative opinion regarding the above-referenced subject has been assigned to this office for reply.

Your specific concerns surround the applicability of Section 3(C) of the Industrial Welfare Commission Order 5-89 to "registry workers in hospital units which have alternative work weeks." As you state, it is common practice in the health care industry, and particularly in acute care hospitals, to use nurses or other workers from a registry on a temporary basis[1]. The workers referred by the registry may work at the employer's place of business for as little as a single day or as much as several weeks or possibly months.

You ask "what happens when a registry sends workers to a health care employer which has an existing and established 3/12 or 4/10 workweek. Can these temporary workers be treated as 'employee[s]...hired after the adoption of the alternative schedule' and thus included in the 4/10 or 3/12 workweek without overtime?"

The Division of Labor Standards Enforcement has consistently taken the position that temporary workers may be hired into the alternative workweek and the employer is not obligated to pay overtime after eight hours in any one day so long as they are employed for the entire regularly scheduled alternative workweek. Temporary workers employed for less than the entire workweek must be paid the applicable overtime after eight hours in any one day.

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[1] You state that these nurses are employed by the registry and we write this letter based on that assumption.

Thus, the answer to your question varies with the length of the employment.

As an example, if a nurse is hired to work in a unit which is on an alternative workweek, is apprised of the fact that the position is for a regularly scheduled alternative workweek, and the nurse is hired for the full week, the employer is not obligated to pay premium rates for the hours in excess of eight during any of the regularly scheduled days of the alternative workweek. If, however, the nurse is either not apprised of the alternative workweek or, if apprised, is not hired for the full, regularly scheduled workweek, the hospital would be required to pay the applicable premium for any work in excess of eight hours in any one day.

If the situation arises where the hospital is actually employing workers who are the employees of another entity, the workers would still be allowed to be employed in the alternative workweek of the hospital under the circumstances described above. However, if the worker is employed by the hospital for the full workweek, the referring employer (a joint employer) could not employ that worker any further during the workweek without incurring an overtime obligation. Such would not be the case with all nurse's registries which, in many instances, are simply employment agencies.

I hope this adequately addresses the questions and concerns you raised in your letter of December 16th.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw
James Curry