

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

525 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102

1988.03.21

ADDRESS REPLY TO:
P.O. BOX 603
San Francisco, CA 94102

IN REPLY REFER TO:

March 21, 1988

Ms. Mary Lee Thomson
Littler, Mendelson, Fastiff & Tichy
455 Capitol Mall, Suite 420
Sacramento, CA 95814-4405

Dear Ms. Thomson:

This is in reply to your letter concerning substitute employees working rotating 8 and 12-hour workdays during a particular week under the amendments to Wage Order 5-80. In my view, there are three situations: substitutes who normally work 8-hour shifts, substitutes who normally work 12-hour shifts, and substitutes who normally work a mixture of both shifts.

If an employee normally works a schedule of five, 8-hour days and is requested to work as a substitute on a 12-hour day, that employee should be paid overtime for four hours.

If an employee who has signed an agreement and normally works a 12-hour day, subject to IWC Order 5-80, Section (K), and is requested to substitute on a 12-hour workday, overtime is not required if the substitute and regular work day does not exceed the three-day/36 hour workweek limits. If during a workweek such an employee works as a substitute on the fourth day of a 12-hour workday schedule, the overtime provisions of IWC 5-80, Section 3(K), must be observed, i.e. time and one-half for the first eight hours and double time for all hours in excess of eight hours.

Substitutes not on regular schedules, who work a mixture of 8 and 12-hour shifts, and who are available for assignments on either five or three-day schedules, must always be paid overtime after eight hours if they are asked to work a 12-hour shift. Subsection (K) is meant to protect employees and must be narrowly construed. It is meant to apply only to employees who are working this schedule regularly and not to employees who regularly alternate schedules.

I hope this answers your questions, if not, please let me know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lloyd W. Aubry, Jr.", written over a large, stylized flourish.

Lloyd W. Aubry, Jr.
State Labor Commissioner

LWA/st

bcc: Regional Managers