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
(415) 703-4150

H. THOMAS CADELL, JR., *Chief Counsel*

December 9, 1993

Mary Maloney Roberts, Esq.
Corbett & Kane
One Market Plaza, Suite 1800
San Francisco, CA 94105

Re: **Pyramiding of Overtime**

Dear Ms. Roberts:

In response to your letter of November 30, 1993, regarding a situation wherein an employee is asked to work a back-to-back work shift and then works her regularly scheduled shift the second day please be advised that the Division only requires overtime payment based upon the employer's legal requirements.

In the facts you submit we are to assume that the employer has established its workday as midnight to midnight. An employee who normally works the 3 p.m. to 11 p.m. shift works a second shift immediately upon completion of her regular shift. During this second shift (11 p.m. to 7 a.m. the following day) the employer compensates the employee time and one-half for the first four hours and double time for the second four hours.[1] The employee then returns at three o'clock on the second day and works her regularly scheduled shift from 3 p.m. until 11 p.m.

The question you present is:

> Is the employer required to compensate the employee at overtime rates for the 8 hours of the employee's regular shift in Day Two, or can the hospital get "credit" for having paid premium rates for the first 7 hours worked during Day Two, that is, the seven hours of the double shift that fall within Day Two?

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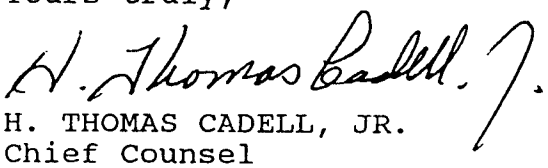
[1] You state that the employer recognizes that it is only required to pay premium wages for one hour of the additional shift "but voluntarily provides additional premium pay for those hours worked in Day Two that are part of the double shift."

It appears that your question is directed to the minimum obligations which the employer must meet under the provisions of the IWC Orders. The employer is simply obligated to pay the required premium on a daily basis. In this case, the employee would be entitled to recover four hours of time and one half premium and three hours of double time premium on the second day.

It should be noted that this letter only addresses the statutory requirements and not any contractual obligations the employer may have.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw