

**County of Ventura
AUDITOR-CONTROLLER
MEMORANDUM**

To: Kelly Shirk, Director, Human Resources

Date: December 13, 2012

From: Christine L. Cohen 

Subject: FAIR LABOR STANDARDS ACT SECTION 207(j) ISSUE ARISING FROM THE AUDIT OF VENTURA COUNTY MEDICAL CENTER PAYROLL PROCESS

We have completed limited audit procedures applied to the County Executive Office-Human Resources Division ("CEO-HR") to address the Fair Labor Standards Act ("FLSA") Section 207(j) ["7(j)"] issue that was noted during our audit of the Health Care Agency ("HCA") payroll process for the Ventura County Medical Center ("VCMC"). The results of our limited audit procedures are summarized below.

BACKGROUND

Service Employees International Union Memorandum of Agreement ("SEIU MOA") Section 1005D states that 7(j) does not apply to VCMC Inpatient Psychiatric, Nursing, and Inhalation Therapy employees in specified "units". Under 7(j), employees are entitled to overtime for hours worked in excess of 8 hours daily or 80 hours biweekly, rather than the standard 40 hours weekly. During the course of our audit, HCA staff explained that 7(j) exemptions were based upon employee job classifications.

SCOPE

Although a specific audit objective during our HCA audit was to determine whether 7(j) employee classifications were appropriate, certain matters that pertained to CEO-HR were noted. As a result, additional limited audit procedures were necessary to address the issue noted below. The additional procedures included discussions with CEO-HR management.

The audit of HCA's payroll process for VCMC was performed in conformance with the *International Standards for the Professional Practice of Internal Auditing* promulgated by The Institute of Internal Auditors. For our VCMC audit, we used documents and records for the period July 1987 through April 2012.

FINDINGS

During our evaluation of HCA's 7(j) employee classifications, we noted an area that needed to be addressed by CEO-HR, specifically regarding interpretation and application of Section 7(j) in accordance with SEIU MOA language. Following are details of the area where improvement was needed. CEO-HR management initiated corrective action as noted.

SEIU MOA Clarification. Guidance and clarification of the SEIU MOA language was required regarding interpretation and application of 7(j) for affected VCMC employees. Our testing disclosed that 115 (29%) of the 400 employees HCA classified as being subject to 7(j) were to have been excluded based on the SEIU MOA. HCA believed that application of 7(j) was based upon employee job classification only, and did not consider the list of excluded units when applying 7(j). Improved collaboration between CEO-HR and HCA appears to be required to determine the proper application of the 7(j) exemption.

Management Action. CEO-HR management stated:

"To date Human Resources has met with HCA's HR and Fiscal staff and the Auditor Controller's Payroll staff. We have had two very productive meetings. As you know, the issue is complex and impacts a significant number of positions. Following County Labor Relations' interpretation of the language in the SEIU MOA and instead of identifying classifications eligible for 7(j), as was done previously, HCA has identified which position control numbers in each unit should receive the specific overtime benefits as described in the SEIU MOA.

"HCA HR has notified County HR that they will be meeting with each of the Managers that are responsible for the position identified and provide direction about how to handle the positions moving forward. When this is accomplished, HCA HR will obtain the approval of the HCA Director. We will then notify the union and the employees about the results of the audit and recommended changes. HCA HR had indicated that they will have notified the managers and resolved any issues by early August 2012. County HR and Labor Relations will notify the union and the employees after HCA HR provides us with the list of identified positions."

Auditor's Comment. As we commented in our separate report to HCA, the Auditor-Controller's Office also has not received the list of identified position control numbers for all hospital designations and has yet to determine concurrence on proposed corrective action.

AUDITOR'S EVALUATION OF MANAGEMENT ACTION

We believe that management actions taken or planned were responsive to the audit findings, except to note the clarification provided in our Auditor's Comment. Management planned to complete corrective actions within 60 days after receiving the list from HCA HR.

We appreciate the cooperation and assistance extended by you and your staff during our performance of these limited audit procedures.

cc: Honorable John C. Zaragoza, Chair, Board of Supervisors
Honorable Peter C. Foy, Vice Chair, Board of Supervisors
Honorable Steve Bennett, Board of Supervisors
Honorable Linda Parks, Board of Supervisors
Honorable Kathy Long, Board of Supervisors
Michael Powers, County Executive Officer