

July 23, 2008

Dear Colleague:

We are pleased to send you a copy of the signed HEO 35-hour workweek implementation agreement. This signed agreement memorializes what PSC members, collectively, worked long and hard to win:

- our contractual right to a 35-hour workweek;
- our right to compensatory time for hours worked beyond 35 hours for all HEO series titles;
- the right for FLSA “non-exempt” HEO series employees to be paid time-and-a-half for hours worked beyond 40 hours in a week.

The agreement also includes a procedure for claiming compensatory time for overtime hours worked since the date of the arbitration award, July 19, 2007.

The 35-hour workweek agreement is the direct result of a significant arbitration victory for PSC members. Members’ activism and willingness to challenge management’s decades-old practice of ignoring the 35-hour workweek was successful. We congratulate you and the PSC contract enforcement staff for this success.

The Right to Paid Overtime After 40 Hours (Based In Federal Law)

In May 2006, the union won a legal settlement, based on the federal Fair Labor Standards Act (FLSA), that established time-and-a-half overtime pay for eligible HEO series employees for time worked beyond 40 hours in a week. Eligible HEO series employees are employed in positions that have been designated as “non-exempt” by CUNY, using definitions in the federal law. Eligible HEO series employees must be paid time-and-a-half for hours worked over 40 hours a week. These “non-exempt” positions include most Assistants to HEO and many HE Assistants. Most HE Associates and HE Officers are in the “exempt” category and not entitled to time-and-a-half payments under FLSA.

CUNY Human Resources is responsible for designating each HEO series position into either “non-exempt” or “exempt” status. If you are unsure as to what your FLSA status is, first contact your college’s Human Resource office to clarify your designation. If you have questions or concerns about your status as either “exempt” or “non-exempt” under FLSA, contact a PSC HEO grievance counselor.

The Right To Compensatory Time After 35 Hours (Based on the Contract)

On July 19, 2007, an arbitrator ruled, in a grievance that originated at LaGuardia Community College, that the PSC-CUNY collective bargaining agreement bars CUNY from regularly scheduling employees in HEO series titles to work more than 35 hours a week. The arbitrator also ruled that the contract requires CUNY to grant compensatory time off to all HEO series employees for assigned work beyond the 35-hour limit.

The PSC has now entered into the enclosed agreement with CUNY management which provides for how the arbitration decision will be implemented by the colleges.

The implementation agreement provides for the following:

- All HEO series employees represented by the PSC have a 35-hour workweek as assigned.
- All “non-exempt” HEO series employees are entitled to receive compensatory time for assigned hours worked between 35 and 40 on an hour-for-hour basis. All “exempt” HEO series employees are entitled to receive compensatory time for all assigned hours worked in excess of 35 hours on an hour-for-hour basis.
- All “non-exempt” HEO series employees are entitled to receive payment, instead of compensatory time, at the rate of time-and-a-half for hours worked in excess of 40 hours in a week.
- “Assigned” overtime hours beyond 35 hours must be authorized in advance in writing by an administrator designated by the college president.
- “Assigned” overtime hours are hours assigned and worked in excess of 35 hours in a week, or those hours in excess of the 35-hour workweek which result from an assignment to a specific project in addition to your usual responsibilities by your supervisor.
- 48 hours notice of assigned overtime should be provided to affected employees by the supervisor to the extent possible.
- HEO series employees are entitled to compensatory time for overtime worked between 7/19/07 and 6/24/08.

Claims for Compensatory Time Earned between July 19, 2007 and June 24, 2008

The Implementation Agreement allows all HEO series employees, regardless of “exempt” or “non-exempt” status, to submit claims for compensatory time for assigned hours beyond 35 hours worked in a week during the period July 19, 2007 to June 24, 2008. **In order to utilize any compensatory time earned between July 19, 2007 and June 24, 2008, you must submit your claim no later than August 24, 2008 or else you will forfeit your right to this compensatory time.**

To claim compensatory time earned for the period July 19, 2007 to June 24, 2008:

- Submit your claim in writing no later than August 24, 2008 to the college's Human Resource Director with documentation or other evidence that the time worked was authorized by your supervisor.
- Provide the date the hours were worked and the number of hours above 35 that you are claiming.
- Retain a copy of your claim for your records.

Claims for compensatory time earned since June 24, 2008 should be documented and filed according to procedures established by the college pursuant to this agreement.

Old Habits Die Hard: Enforcing a 35-Hour Workweek For All HEOs

We are professionals, and we are motivated by a commitment to serve the interests of CUNY students, our colleagues, and the larger community. For too long, CUNY management has taken advantage of our commitment and has not honored our right to a 35-hour workweek and payment for time-and-a-half overtime as required by federal law. Now, CUNY management has agreed to honor the contract and the law. But, as we all know, old habits die hard – theirs and ours.

New procedures and a new effort by all concerned will be necessary to enforce our hard-earned rights. We encourage all HEO series employees to add to your continued commitment to service a commitment to enforce our collective right to a 35-hour workweek. If there is more work to be done beyond the 35 hours, then we deserve to be compensated for that extra work through time and/or money. It will take time to change entrenched expectations —on the part of HEO series employees and management. So, let us take this opportunity to commit to continuing to assert our right to a 35-hour workweek so that we can also enjoy a life after work.

Enclosed is a fact sheet that provides additional information about your right to compensatory time and overtime payments. Should you need assistance in filing any claims for compensatory time for the period July 19, 2007 through June 24, 2008 or have any other questions, please contact a HEO grievance counselor at the PSC headquarters: (212) 354-1252.

In solidarity,

Steve London
PSC First Vice President

Jean Weisman
HEO Chapter Chair

Iris Delutro
Vice Pres. for Cross-Campus Units

IMPORTANT FACTS ABOUT OVERTIME FOR HEO SERIES EMPLOYEES FROM THE PSC

- 1. What is overtime?** Overtime hours are those a HEO series employee is assigned to work in excess of his/her usual 35-hour workweek or where a supervisor assigns a HEO series employee to perform a specific project in addition to his/her usual responsibilities which will require the employee to work beyond his/her regularly scheduled 35-hour workweek for a defined period in order to complete the project on time.

- 2. What is compensatory time?** Compensatory time is time off equal to the number of hours worked in excess of the 35-hour workweek.

- 3. Who is eligible for compensatory time?** All HEO series employees are entitled to compensatory time. HEO series employees who are “non-exempt” under the Fair Labor Standards Act (primarily Assts. to HEO and HE Assts.) are entitled to receive compensatory time for hours assigned between 35 and 40 hours in a week and payment at the rate of time-and-a-half for hours worked beyond 40 in a week. HEO series employees who are “exempt” under the Fair Labor Standards Act are entitled to receive compensatory time for all hours assigned in excess of the 35-hour workweek.

- 4. What is the Fair Labor Standards Act (FLSA)?** The FLSA is the federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments. Covered “non-exempt” employees must receive overtime pay for hours worked over 40 per workweek at a rate not less than one-and-one-half times the regular rate of pay. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days. Hours worked ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace. Employers must also keep employee time and pay records.

- 5. How does compensatory time differ from overtime payments?** Overtime is payment for all hours worked in excess of 40 hours in a workweek as defined by the FLSA. HEO series employees who are “non-exempt” must receive payment (not compensatory time) at the rate of time-and-a-half for hours worked in excess of 40 hours. Most Assistants to HEO and many HE Assistants are “non-exempt” and eligible for overtime payments. Most HEO Associates and Higher Education Officers are “exempt” under FLSA and not eligible for overtime payments from the University for hours worked beyond 40 in any workweek but are eligible for compensatory time. If you are unsure of your status as either “exempt” or “non-exempt” for purposes of overtime payments, contact the Human Resources Director at your college.

- 6. What do I do if I am classified as “exempt” and I think I am misclassified?** There are several factors that go into classifying an employee as “exempt” or “non-exempt” and these classifications are carried out on a case-by-case basis. So, the first step is to clarify your classification with the Human Resources Director at your college. Then, call the

union and speak to a HEO grievance counselor to further discuss your situation. Based on that conversation, additional steps may be considered.

7. How do I earn compensatory time? When you are assigned overtime beyond your 35-hour workweek and have received authorization in advance and in writing and your time record reflects the additional hours worked, you are entitled to receive compensatory time for hours worked between 35 and 40 if you are “non-exempt.” If you are “exempt” you are entitled to receive compensatory time for all hours worked in excess of your 35-hour workweek.

8. How do I use earned compensatory time? The earning and using of compensatory time will be recorded based on the contractual HEO “leave year” (September 1 – August 31) and will be reported on a quarterly basis. Compensatory time should be scheduled to be used as promptly as possible within the quarter in which it is earned, but no later than 30 calendar days after the end of the quarter. The use of compensatory time will be scheduled by the supervisor in consultation with the employee.

9. How do I know how much compensatory time I have earned? All HEO series employees are entitled to and will be provided with quarterly statements of compensatory time accrued and/or taken. If you do not receive your quarterly statement, notify a HEO grievance counselor at the PSC.

10. What if I am told to work in excess of my 35-hour workweek and my supervisor refuses to authorize overtime? In these situations, immediately contact a HEO grievance counselor for guidance.

11. What if I am given too much work to do in a 35-hour workweek and my supervisor tells me I should be able to complete this work within the 35-hour workweek? The contract protects against members being required to work an excessive number of hours or being assigned an unreasonable schedule. Depending on the circumstances, you may have the right to file a grievance. Please contact a HEO grievance counselor for guidance in these situations.

12. What if I work beyond 40 hours in a week and my supervisor tells me that the college cannot pay for overtime because the budget is limited or the college cannot afford to keep me if I claim overtime payments? If you are told to work more than 40 hours a week and you are in a “non-exempt” title, then CUNY is obligated by law to pay you overtime. If CUNY does not have the money to pay for overtime, then they cannot require you (and you should not offer) to work beyond 40 hours. Remember, you are contractually entitled to compensatory time for the 5 hours of assigned overtime between 35 and 40 hours. Please contact a HEO grievance counselor for guidance in these situations.

13. Will there be new procedures requiring time sheets? The FLSA requires CUNY to maintain time and pay records. At the present time, there are various timekeeping methods in use by the colleges. We will be contacting the University to determine what,

if any, changes individual colleges will be implementing to track HEOs' time and negotiate such changes with them. In the event you are asked to sign timesheets where none existed previously, you will have to follow whatever instructions you are given by the college while the union pursues this matter further. Please inform a HEO grievance counselor if changes in timekeeping are implemented on your campus.

14. Isn't this kind of timekeeping unprofessional? Some form of timekeeping record will be helpful in enforcing the 35-hour workweek. There are different ways to record time and some are less onerous and intrusive than others. It is not unheard of for time records to be kept in professional settings; many lawyers and accountants, for example, record their time.

To contact a PSC HEO grievance counselor, call the PSC on Tuesday, Wednesday or Thursday during the hours of 10 a.m. to 4 p.m. at (212) 354-1252.