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1. EMPLOYEES—STATE—COMPENSATION—SERVICE IN ADDITION TO STANDARD WORK-WEEK—NOT OTHERWISE OFFSET BY COMPENSATORY TIME OFF—SHOULD BE COMPUTED ON HOURLY BASIS—SECTIONS 121.16, 143.10 (B) (C) RC.
2. STATE EMPLOYEES ARE COMPENSATED BY A MONTHLY SALARY—BASED UPON FULL TIME SERVICE—WHERE EMPLOYEE ABSENT FROM STATE SERVICE WITHOUT AUTHORITY—SALARY DEDUCTION SHOULD BE MADE—SECTION 143.10 (E) RC.
3. DEDUCTIONS FROM SALARY OF STATE EMPLOYEE—PERIODS OF UNAUTHORIZED ABSENCE—NO REQUIREMENT COMPUTATION OF AMOUNT SHOULD BE MADE BY DEPARTMENT CONCERNED BY APPLICATION OF FORMULA, SECTION 143.10 RC, COMPUTATION OF SERVICE—IN EXCESS OF STANDARD WORK-WEEK—FORMULA NOT UNREASONABLE—HOW DEDUCTIONS COMPUTED—SECTION 121.16 RC.

SYLLABUS:

1. The compensation of state employees for service in addition to the standard work-week, not otherwise offset by compensatory time off, as authorized in Section 121.16, Revised Code, should be computed on an hourly basis as provided in divisions (B) and (C) of Section 143.10, Revised Code.

2. Where state employees are compensated by a monthly salary such salary is "based upon full-time service" as provided in Division (E) of Section 143.10, Revised Code, and where an employee is absent from the state service without authority a deduction from his salary should be made with respect thereto.

3. In making deductions from the salary of a state employee with respect to periods of unauthorized absence there is no requirement that the computation of the amount thereof be made by the department concerned by the application of the formula provided in Section 143.10, Revised Code, for the computation of compensation for service in excess of the standard work-week; but the application of such formula in such cases could not be deemed unreasonable. Such deductions may be computed by the department concerned by any rule which reasonably relates the period of unauthorized absence to the monthly service required under the "standard work-week provision" in Section 121.16, Revised Code.

Columbus, Ohio, November 28, 1955

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Questions have arisen concerning the interpretation of Section 121.16 R. C., enacted by the General Assembly June 24, 1955, effective October 11, 1955, relative to the establishment of a standard 40-hour work week and the payment of overtime in excess of the 40 hours in a seven day period, *to salaried employees.*

“Questions have also arisen as to the correct method of computing deductions from salaries due employees for unauthorized absence from work.

“Under the provisions of Section 143.10 (B) R. C., the pay schedule of all employees shall be on a *monthly* basis, provided that upon the request of the director of any department, the State Civil Service Commission may authorize the director of any department to pay any employee or group of employees upon an hourly basis.

“Section 143.10 (C) R. C., states that where it is necessary or desirable to compensate employees on an hourly rate basis, such hourly rates shall be proportionate to the monthly rate provided for the class to be determined by dividing the proportionate monthly rate by the product of four and one-third times 40, 44, or 48 hours, which ever is nearest to the established regular work week for the class and the department, calculated to the nearest cent.

“Section 121.16 Revised Code, effective October 11, 1955, establishes the work week at 40 hours for all employees whose salary or wage is paid in whole, or in part, by the state. (After July 1, 1956, the standard work week in the Department of Mental Hygiene and Correction shall not exceed 44 hours.

“Assuming an employee earns \$300.00 per month, and following the formula set forth in Section 143.10 (C) R. C., 4.3333 times 40 equals 173.33. \$300.00 divided by 173.33 equals \$1.73, or the rate per hour to be paid employees for authorized overtime pay in excess of 40 hours in a given seven day period.

“If the same employee was authorized to work eight hours overtime, he would be entitled to eight times \$1.73, or \$13.84, for such overtime.

“For many years, state departments have deducted for unauthorized absence for payroll purposes on the basis of the number of days in the month in which the absence occurred—either 28, 30 or 31.

“Assuming an employee earning \$300.00 per month was absent one day in a seven-day period, without authorization, and in a 30-day month, his pay would be reduced 1/30th of \$300.00, or \$10.00 for the day, or at the rate of \$1.25 per hour. Within the same, or another, seven-day period, assuming the same employee worked eight hours overtime, he would be paid \$1.73 per hour and would receive \$13.84, a difference of \$3.84 in two eight-hour days.

“It would appear that a salaried employee who is voluntarily absent from work, and such absence is not authorized, should not receive a deduction from his pay for the unauthorized absence at a lesser amount than he would receive if he performed the same number of hours of overtime pay.

“Question 1—Should the time lost of a voluntarily absent monthly salaried employee be computed on the same basis as for overtime work, or

“Question 2—Should the time lost of a voluntarily absent monthly salaried employee be computed on an hourly rate or on a 28, 30, or 31-day basis when *no overtime* is worked, or

“Question 3—Should the time lost of a voluntarily absent monthly salaried employee be computed on a 28, 30, or 31-day basis or any overtime be computed as set forth under Section 143.10 (C) R. C.?

Section 121.16, Revised Code, as amended effective October 11, 1955, reads in part as follows:

“Forty hours shall be the standard work-week for all employees whose salary or wage is paid in whole or in part by the state. Such employees shall not be required to work on days declared by law to be holidays unless failure to work on such holidays would impair the public service. Where such employees are required by their responsible administrative superiors to work in excess of forty hours in any seven day period or on days declared by law to be holidays, they shall be compensated for such time worked at their regular rate of pay, or be granted compensatory time off within ninety days thereafter.”

The statute does not expressly provide the basis, with respect to service “in excess of forty hours in any seven day period,” upon which the “regular rate of pay” shall be applied to salaried employees, for the

compensation of such employees is required, under the provisions of Section 143.10, Revised Code, to be "on a monthly basis." However, it is provided in division (C) of this section that :

"Where it is necessary or desirable to compensate employees on the basis of hourly rates, such hourly rates shall be proportionate to the monthly rate provided for the class, to be determined by dividing the appropriate monthly rate by the product of four and one-third times forty, forty-four, or forty-eight hours, whichever is nearest to the established regular work week for the class and the department, calculated to the nearest cent."

Because the short periods of service "in excess of forty hours in any seven day period" cannot readily or precisely be related to a monthly pay schedule it follows that this is an instance in which it is "desirable," if not "necessary," to compensate employees "on the basis of hourly rates" as provided in division (C) of Section 143.10, *supra*.

These provisions as to compensation for service beyond the "standard work-week" do not, however, have any necessary relationship to deductions from compensation with respect to service which falls below such standard.

As to such cases the statute makes provision for sick leave and for vacations, the extent of the latter being committed, in special and meritorious cases, to the discretion of the director of the department concerned. See Section 121.161, Revised Code. I understand your query to concern only *unauthorized* absences, however, and my discussion of the matter will be limited to such cases.

It is plain that the statute makes no *express* provision for pay deductions based on such absences but since it is provided in Section 143.10, Revised Code, that the salary ranges therein provided "are based on full-time service" there is a clearly implied requirement in the law for such deductions.

There being no detailed provision in the statute for the computation of the amounts of such deductions it would appear that any rule with respect thereto whereby the time of the unauthorized absence is reasonably related to the amount of service required monthly on the basis of the "standard work week," would be sufficient to meet the requirements of the statute.

Quite clearly such a relation could not be one of absolute precision in view of the varying lengths of the several calendar months. Moreover,

the directors of the several departments concerned may reasonably be deemed to be authorized to exercise a fairly broad discretion in the matter, especially since unauthorized absences, if frequent or of long duration, may properly be made the basis of disciplinary action by way of suspension without pay as provided in Section 143.26, Revised Code.

Although there is no *requirement* in the statute that the formula provided in division (C) of Section 143.10, *supra*, for the determination of overtime hourly rates be applied in determining the rates of deductions for unauthorized absences, it is obvious that a rule of a department which would apply such formula in such cases *could not be deemed unreasonable*. This formula appears to be derived by computing the hourly "work-year" by multiplying forty hours by fifty two weeks, i.e., two thousand and eighty hours; dividing this product by twelve to ascertain an average "work-month," i.e., 173.33 hours, to which the monthly salary is applicable. This figure divided by 40 results in a quotient of 4.33; so that the multiplication of that figure by the number of hours of a standard work-week results in a figure approximating the number of hours worked in an "average" month, and the division of that figure into the monthly salary rate permits the computation of an hourly rate which, in my opinion, is reasonably related to the rate of monthly compensation.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. The compensation of state employees for service in addition to the standard work-week, not otherwise offset by compensatory time off, as authorized in Section 121.16, Revised Code, should be computed on an hourly basis as provided in divisions (B) and (C) of Section 143.10, Revised Code.

2. Where state employees are compensated by a monthly salary such salary is "based upon full-time service" as provided in Division (E) of Section 143.10, Revised Code, and where an employee is absent from the state service without authority a deduction from his salary should be made with respect thereto.

3. In making deductions from the salary of a state employee with respect to periods of unauthorized absence there is no requirement that the computation of the amount thereof be made by the department concerned by the application of the formula provided in Section 143.10, Revised Code, for the computation of compensation for service in excess of

the standard work-week; but the application of such formula in such cases could not be deemed unreasonable. Such deductions may be computed by the department concerned by any rule which reasonably relates the period of unauthorized absence to the monthly service required under the "standard work-week provision" in Section 121.16, Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General