



Berkeley Housing Authority

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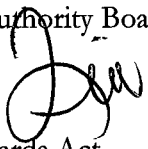
Office of the Executive Director

Item 6G

NEW BUSINESS

September 10, 2015

To: Honorable Chairperson and
Members of the Berkeley Housing Authority Board

From: Tia M. Ingram, Executive Director 

Subject: Exempt Positions - Fair Labor Standards Act

RECOMMENDATION

Approve a Resolution designating the exempt positions within Berkeley Housing Authority classification plan

BACKGROUND

Berkeley Housing Authority is an "Agency Shop:" an establishment in which the union serves as the agent for and receives dues and assessments from, all employees in the bargaining unit regardless of union membership. All but two positions in BHAs classification plan are represented (see below):

Classification	Representative	No. Positions
BHA Executive Director	Exempt	1
BHA Executive Assistant	Unrepresented	1
BHA Finance Manager	Public Employees Union- Local One	1
BHA Housing Occupancy Manager	Public Employees Union- Local One	Not staffed
BHA Management Analyst	Public Employees Union- Local One	1
BHA Housing Specialist	SEIU, Local 1021	4
BHA Accountant 1	SEIU, Local 1021	1
BHA Office Assistant 2	SEIU, Local 1021	2
BHA Office Assistant 1	SEIU, Local 1021	1

California Labor Code contains provisions that guarantee employees enhanced salary (1.5 hourly rate) when they are required to work hours in excess of the standard work day or work week. In the case of BHA, where we have a 9/80 work schedule, a work day is defined as "9" or "8" hours (depending on the day), and 40 hours in a week (the work Friday is split between both work weeks).

	Mon	Tues	Wed	Thurs	Fri	Total
Week 1	9	9	9	9	4/4*	40
Week 2	9	9	9	9	4/4*	40

*the work week ends at 12 noon, with the remaining 4 hours charged to the following week.

The Code provides the ability for an employer to exempt certain jobs classified as “executive, administrative or professional” from over-time pay.

BHA, consistent with the City of Berkeley, has always exempted positions in the executive series and professional classifications, and certain administrative classifications – based upon the regular duties/obligations of the position.

The general test used by the City and BHA for administrative positions is the regular, on-going need to work hours outside the normal work day (i.e. commission secretaries) in addition, to determining whether the employee’s primary duty includes the exercise of discretion and independent judgment. Thus, a Management Analyst that performs high level administrative assignments, but does not have any commission responsibilities, does not regularly attend City Council (BHA Board meetings) would not be exempt. Another Management Analyst position that is secretary to a Commission (is required to attend all BHA Board meetings) would be exempt.

The Memorandum of Understanding with Local One (Attachment 1) acknowledges the Authority’s responsibility to review the positions of staff, and advise the union of the positions that will be classified as “exempt,” and ineligible for over-time pay, and the reasons for same.

STATUS

The Executive Director is an exempt position. We have further designated the Finance Manager position “exempt” because the incumbent effectively functions as the Executive Director in the absence of the Executive Director; is a signatory for financial transactions; is required to attend the monthly Board meeting; is often required to meet with the Finance Committee and/or auditor during non-work hours; and her primary duty includes the exercise of discretion and independent judgment.

The “exempt” status, per the Local One contract affords such employees two benefits (Attachment 2):

- A. 40 hours of administrative leave each calendar year; and
- B. Accelerated vacation accrual: first advancement after 2nd, versus 4th

Non-Exempt	Vacation Accrual		Exempt	Vacation Accrual
1 st thru 3 rd yr	2 weeks		1 st thru 2 nd yr	2 weeks
<u>*4th</u> thru 11 th yr	3 weeks		<u>*3rd</u> thru 5 th yr	3 weeks
12 th thru 17 th yr	4 weeks		6 th thru 17 th yr	4 weeks
18 th thru 24 th yr	5 weeks		18 th thru 24 th yr	5 weeks
25 th beyond	6 weeks		25 th beyond	6 weeks

Non-exempt positions within the Authority, represented by SEIU Local 1021 and Local One, that are required to work outside normal work hours on an irregular basis, are compensated at time and a half (cash or comp-time) for actual hours worked.

FINANCIAL OBLIGATIONS

40-hours of Admin Leave

CONTACT PERSON

Tia M. Ingram, Executive Director, 981-5471

Jesy Yturralde, Finance Manager, 981-5488

Attachments:

1. Exempt Status per Local One contract
2. Resolution

RESOLUTION NO. 15-

HOUSING AUTHORITY POSITIONS CLASSIFIED AS "EXEMPT" FROM FAIR LABOR STANDARDS ACT

WHEREAS, the Housing Authority is an employer, and has legal and moral obligations to compensate employees for work performed; and

WHEREAS, there are two authorized bargaining units within the Housing Authority; and

WHEREAS, the Executive Director is responsible for managing the work of employees, including making work assignments within and outside normal work hours; and

WHEREAS, the Executive Director is responsible for designating the positions within the Housing Authority that qualify to be classified as "exempt" in accordance with the California Labor Code, and the Local One contract; and

WHEREAS, the Finance Manager is a professional class, that also functions in an executive capacity in the absence of the Executive Director; and

WHEREAS, the essential duties of the Finance Manager require exercise of discretion and independent judgement, and include ongoing assignments that are frequently or exclusively performed outside normal work hours;

NOW THEREFORE, BE IT RESOLVED that the classification and position of Finance Manager is designated "exempt" with regard to California Labor Code and the Memorandum of Understanding with Local One.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on September 10, 2015 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest: _____
Tia M. Ingram, Secretary

- 20.2 **Eligibility:** All employees not specifically designated as eligible to receive Administrative Leave shall receive compensation for all work performed in excess of their regular workday or in excess of their workweek. Payment for all work performed in an overtime status shall be compensated at a rate not less than one and one-half (1 1/2) times the regular hourly rate of pay of the employee designated and authorized to work overtime. The actual hourly rate of pay shall be consistent with the requirements of FLSA.
- 20.3 **Maximum Accumulation:** Employees entitled to compensation for overtime worked may accumulate compensatory time for all hours worked in excess of the regular workday / workweek in lieu of compensation at the rate of one and one-half (1 1/2) hours for each hour worked. Compensatory time off may accumulate to an amount not to exceed ninety (90) hours in any one calendar year. Accumulation of compensatory time off in excess of ninety (90) hours may be allowed at the discretion of the Executive Director.
- 20.4 **Executive Director Discretion:** Whether an employee shall be compensated for overtime by compensatory time off or by payment shall be at the sole discretion of the Executive Director.
- 20.5 **Final Compensation:** In the event of a layoff, resignation or termination of an employee, he or she shall be entitled to compensation for all accumulated overtime worked or accrued.
- 20.6 **Call Back:** Employees eligible for overtime who are called from their living quarters for emergency work or duty on days other than their normal workdays, or on normal workdays outside of their regular work hours, shall be paid emergency overtime compensation for actual time worked. The minimum time for such overtime compensation to be paid shall be four (4) hours. If such overtime worked is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for actual time worked.

ARTICLE 3 - LEAVES

SECTION 21: ADMINISTRATIVE LEAVE

All employees in classifications identified as not eligible for Overtime under Section 20 of this Understanding shall be credited with forty (40) hours of Administrative Leave each January 1. Administrative Leave which is not utilized during any calendar year will be credited to the individual's vacation balance at the end of the calendar year. All rules governing vacation balances and when vacation can be scheduled in Section 22 shall apply to Administrative Leave. The classifications eligible to receive Administrative Leave are designated in Exhibits "A" of this Understanding.

Persons appointed to classifications not eligible for overtime compensation during the calendar year shall receive Administrative Leave prorated based on the number of pay periods remaining in the calendar year.

SECTION 22: VACATION

- 22.1 **Entitlement:** All employees who have worked for the Authority six (6) months or more and who

have worked half-time or more shall be entitled to vacation leave.

22.2 **Vacation Approval:** The times during the calendar year at which an employee shall take vacation shall be determined by the Executive Director with due regard for the wishes of the employee and particular regard for the needs of the service. Whenever practical, employees working in the same classification within the Authority shall be given preference of vacation time by seniority. If the Authority cannot allow the vacation that the employee requested, the employee, with the Executive Director's approval (if the service permits), may take vacation at another mutually agreed upon time during the same calendar year. If the requirements of the service are such that the Executive Director cannot permit an employee within the Authority to take an annual vacation leave, or any part of such leave within a particular calendar year, the Executive Director may permit the employee to take the deferred vacation during the following year. In no instance shall an employee lose his or her entitlement to vacation earned but not taken under the circumstances described in this section.

With advance supervisory approval, vacations may be taken in increments of one (1) hour.

22.3 Accrual and Use

22.3.1 **Accrual, Use, and Limitations for Employees:** Each employee during the first two (2) years from date of hire shall be entitled to vacation leave credits at the rate of 5/6 work day for each calendar month of service. Each such employee shall be entitled to take, during these first two (2) years, only such actual vacation leave as he or she earns; provided, however, that no employee with less than six (6) months of service shall be entitled to take his or her earned vacation leave.

The provisions contained in this subdivision 22.3.1 shall apply to all reappointments except reinstatements or reemployments.

22.3.2 **Accrual Rate as of March 1, 1988:** Effective March 1, 1988 employees shall earn and be entitled to take annual vacation leave as follows:

First (1 st) through third (3 rd) years of service	2 work weeks
Fourth (4 th) through eleventh (11 th) years of service	3 work weeks
Twelfth (12 th) through seventeenth (17 th) years of service	4 work weeks
Eighteenth (18 th) through twenty-fourth (24 th) years of service	5 work weeks
Twenty-fifth (25 th) and subsequent years of service	6 work weeks

22.3.3 **Accrual for Employees Subject to Administrative Leave:** Employees in classifications included in the Administrative Leave Policy shall earn and shall be entitled to take annual vacation leave as follows:

First (1 st) two (2) years of service	2 work weeks
Third (3 rd) through fifth (5 th) years of service	3 work weeks
Sixth (6 th) through seventeenth (17 th) years of service	4 work weeks
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