

CDLE Comments in response to Rulemaking for Public Hearing

September 4, 2019

3-26 (proposed). All full-time employees work a minimum of 40 hours during a standard FLSA workweek of Saturday at 12:00am through Friday at 11:59pm.

CDLE Comment: CDLE proposes no change to the current rule. According to the USDOL: An employee's workweek is a fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods. It need not coincide with the calendar week, but *may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees.* The current rule meets this definition and there has been no explanation as to why the proposed change should be considered or what benefit it would bring to the state.

By specifying the FLSA workweek as Saturday at 12:00 am through Friday at 11:59 pm in rule, this eliminates the option for our employees to work a compressed flex schedule which is defined as: Four 9 hours days a week, plus one day split between the current and succeeding workweek (the "flex" day.) The flex day will break at either 12 Noon or 1:00 PM. The flex day must be taken off during the succeeding week in order to balance both weeks at 40 hours (i.e. If the flex day is Friday, then the day off during the succeeding week will be Friday.)

This is a very popular schedule with our employees and to remove this option with no explanation or basis would be contrary to CDLE's Model Employer/DPA's Employer of Choice initiatives.

5-10 (proposed). Permanent full-time employees on the payroll when the holiday is observed are granted eight hours of paid holiday leave (prorated for permanent part-time employees) to observe each legal holiday designated by law, the Governor, or the President. Appointing authorities may designate alternative holiday schedules for the fiscal year. If a holiday occurs while an employee is on paid leave, the employee receives the holiday. If a holiday occurs when an employee is on unpaid leave, it is then prorated; see Rule 5-17 for unpaid leave definitions. (11/1/19)

CDLE Comment: This proposed rule needs clarification. What does the phrase "if a holiday occurs while an employee is on unpaid leave, then it is prorated" mean? Does this suggest an employee would need to be on LWOP the full day before and the full day after the holiday in order to have the leave prorated? Current practice is to prorate the holiday for any LWOP in a month.