

The State of South Carolina



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November 10, 1988

Joseph P. Good, Jr., Esquire
General Counsel
Medical University of South Carolina
171 Ashley Avenue
Charleston, South Carolina 29525-1015

Dear Mr. Good:

You have requested an opinion as to whether it is permissible for the Medical University of South Carolina (MUSC) to pay a salary differential to nurses who regularly work a weekend shift.

Your request indicates that MUSC is experiencing a shortage of nurses willing to work on weekends and that your consultants recommend that you adopt a weekend salary differential policy to improve recruitment, retention, and staffing. The payment of a salary differential for all work performed on Saturday, or Sunday, regardless of the time of work, is apparently common practice in the industry.

Currently, State regulations authorize the payment of a shift differential for employees in positions regularly assigned to an evening, night, rotating, or split shift, provided the majority of the hours assigned during the shift are between 3:00 p.m. and 6:00 a.m. (See State Budget and Control Board Regulation 19-702.05 B(3)).

It is arguable that the regulation was not exhaustive in enumerating "...evening, night, rotating, or a split shift..." as the types of shifts for which a differential is permissible. This portion of the regulation could be construed as merely listing some examples of the types of shifts for which a differential is permissible and "weekend" could be inserted into the list without violence to the intent of the regulation. However, a problem arises

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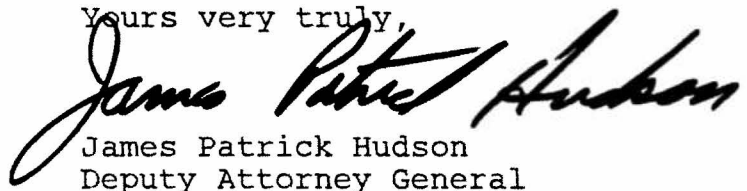
because Regulation 19-702.05 B(3) is quite specific in that it limits differential pay to those situations where the majority of hours worked are between 3:00 p.m. and 6:00 a.m. There is no construction that can be placed on this regulation that would allow differential pay where the majority of hours assigned during the shift are not between 6:00 a.m. and 3:00 p.m.

However, Regulation 19-702.02 F provides that the Budget and Control Board may approve justifiable exceptions to these policies and regulations. Presuming this regulation to be valid, there is no definition of "justifiable", nor is there any indication of the analysis or procedure to be employed by the Budget and Control Board in granting an exception. Therefore, it appears it would be a fact determination by the Budget and Control Board whether the circumstances here are "justifiable" such that an exception should be granted. If the Board makes such a determination, it would appear that it has the authority to grant an exception and allow the payment of a shift differential to nurses regularly working any hours on the weekend.

In answer to your original question, it would appear that it is permissible for MUSC to pay a salary differential to nurses who regularly work a weekend shift contrary to Regulation 19-702.05 B(3), provided the State Budget and Control Board finds such a differential is justifiable and grants an exception to this Regulation pursuant to the authority of Regulation 19-702.02 F.

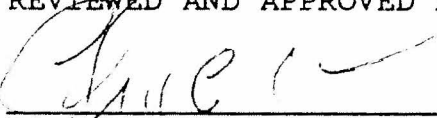
If I can provide additional information, or be of further assistance, please do not hesitate to contact me.

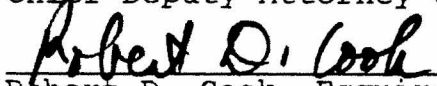
Yours very truly,


James Patrick Hudson
Deputy Attorney General

JPH/srcj

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