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GOVERNOR

OFFICE OF THE GOVERNOR
American Samoa

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February 15, 2013

EXECUTIVE ORDER NO. 005-2013

**AN ORDER TO FACILITATE CURRENT AND FUTURE COMPLIANCE
WITH THE FAIR LABOR STANDARDS ACT**

Section 1. Authority

This Executive Order is issued under the authority granted to the Governor in Article IV, Sections 6 and 7 of the Revised Constitution of American Samoa and the American Samoa Code Annotated Section 4.011.

Section 2. Preamble

In late 2011 the United States Department of Labor (USDOL) found the American Samoa Government (ASG) to be non-compliant with certain provisions of the Fair Labor Standards Act regarding payment of overtime and calculation of compensatory time.

ASG agreed in an administrative settlement to resolve the matter by bringing itself into compliance with the FLSA. This settlement requires ASG to pay back wages to the affected employees, to adjust current compensatory time calculations, and to adopt a Plan of Corrective Action to correct policies and practices within ASG to avoid further FLSA violations. It is the purpose of this Executive Order to set forth the Plan of Corrective Action.

Section 3. Delegation of Authority

The Director, Department of Human Resources (DHR), is delegated the authority and responsibility to implement the following Plan of Corrective Action.

Section 4. Plan of Corrective Action

- a. **Regulatory changes:** Amendments to the American Samoa Administrative Code shall be promulgated to bring Chapter 4 ASAC into compliance with the FLSA.
- b. **Payroll management changes:**
 - i. DHR shall identify all individuals who are exempt from FLSA overtime provisions upon hiring.
 - ii. DHR shall indentify all individuals who are salaried rather than paid hourly upon their hiring.

- iii. The Payroll Division of Treasury and DHR shall cause all overtime and compensatory time to be recorded for all non-exempt employees.
 - iv. All recorded hours are to be sourced from time sheets. Recording hours through the use of "bubble sheets" is to be discontinued.
 - v. DHR is to ensure all hours worked in excess of 40 per week for any non-exempt employees are paid at overtime rates (1:1.5) or compensatory time rates (1:1.5).
 - vi. Compensatory time in excess of 240 hours is to be paid at overtime rates (1:1.5).
- c. **Policy Changes:**
- i. DHR is to develop a written overtime and compensatory time policy for posting in common areas of each government department or agency. Managers are responsible for policy enforcement.
 - ii. The policy is to include:
 - All FLSA-required provisions, including those pertaining overtime and compensatory time, and the nursing mother's provisions.
 - Notice that employees may not work over 40 hours per week. This means they may not be at their place of work over 40 hours per week.
 - Notice that if employees need to work overtime, it must be pre-approved by their department or agency head.

NOTE: Unauthorized overtime must still be paid at overtime or compensatory time rates, however employees working unauthorized overtime may be subject to disciplinary action.
 - Notice that employees must clock in and out for lunches.

NOTE: Employees may not work at all during lunches. If they do, they must be paid for the time.
 - The policy is also to be in compliance with the Family Medical Leave Act (FMLA).
 - iii. The policy shall be published in the form of a handout, or incorporated into an employee manual, for distribution to all employees.
- d. **Training:**
- i. Department directors and managers shall undergo annual FLSA and FMLA training to be administered by DHR.
 - DHR will be responsible for maintaining documentation of managerial training.
 - The training is to include detailed information as to definitions under the FLSA.
 - Training shall also include information regarding nursing mother's provisions.
 - ii. Department or agency employees will undergo initial FLSA and FMLA training upon hiring, and annual training thereafter administered by department directors and managers. Individual departments will be responsible for maintaining documentation of training, and will provide copies of the documentation to DHR.

Section 5. Effective Date and Timelines for Compliance

- a. **Effective Date:** Due to the need to achieve compliance with the USDOL administrative settlement this Executive Order is effective immediately.
- b. **Timelines for Compliance:**
 - i. DHR shall publish Notice to adopt amendments to Chapter 4 ASAC by April 30, 2013, and thereafter process them to adoption in accord with the Administrative Procedures Act, Title 10 ASCA.

- ii. Payroll management changes are to be implemented by Treasury by December 31, 2013.
- iii. Policies and training materials are to be developed by DHR by June 30, 2013, with training of managers to be completed by December 31, 2013, and training of employees to be completed by December 31, 2014, and annually thereafter.

Dated: February 18, 2013.

Lolo M. Moliga

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Governor of American Samoa