



Chuck Alexander, *Executive Vice President*

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July 2, 2010

Dear State Board of Directors:

As anticipated, the Administration has "urged" the State Controller to reduce our pay to federal minimum wage. This was done via the attached pay letter to J. Chiang from D. Endsley of the Department of Personnel Administration. Please take the time to read the cover letter, and note that the letter "urges" the Controller to take the steps necessary to implement minimum wage. Also, note that the pay letter "excludes" from the minimum wage those six units that have "tentative" deals with this Administration.

Unfortunately for those six units, the "law" this Governor is so intent on following - **DOES NOT ALLOW FOR EXEMPTIONS TO MINIMUM WAGE** for units that have "tentative" deals. Also, please share with your members, the attached Controller's response to DPA's "urging".

In the interim, we need to urge our members to write their respective management regarding the hardship(s) that such order is and or will have on their ability to report for work. How can we report to work if we can't afford to buy gas for the car we can't make the payment on? Where is our Secretary on this issue? We have not seen or heard from anyone in CDCR management decrying this treatment of their employees. Why is that?

Also, as this was written, the Appellate Court just issued a ruling on the minimum wage case *Gilb v. Chiang*. You can read the ruling at <http://www.courtinfo.ca.gov/opinions/documents/C061947.PDF> or you can locate the link on our website. The decision is 45 pages long and on first blush appears to affirm that minimum wage can be ordered absent a budget. However, it also appears, at first blush, to prohibit not doing so to select groups of employees while doing so to others regardless of a "tentative" deal.

We will post more information as it develops.

Chuck Alexander
Executive Vice President

DEPARTMENT OF PERSONNEL ADMINISTRATION

OFFICE OF THE DIRECTOR
1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258



July 1, 2010

The Honorable John Chiang
California State Controller
300 Capitol Mall, Suite 1850
Sacramento, California 95814

Dear Controller Chiang,

Today is July 1, 2010, and there is no state budget. Regrettably, we must take the steps outlined in the attached pay letter to adjust wages and salaries during this budget impasse. The six Bargaining Units with tentative agreements are not included because we are seeking and expect the Legislature to approve a continuous appropriation for these six units. We anticipate passage of a continuous appropriation for these bargaining units before the end of the month.

In May 2003, the California Supreme Court held in *White v. Davis* that in the absence of an approved state budget, the Controller has no legal authority to pay state employee wages and salaries except as required by federal labor law.

In 2008, the Department of the Personnel Administration (DPA) issued a pay letter directing the payment of wages and salaries in compliance with *White v. Davis*. You did not implement that pay letter. You cited your computer system as one of the reasons you could not pay minimum wage for state employees during a budget impasse. Based on your refusal, the DPA sued and won in the trial court. You appealed to the appellate court and we are waiting for a decision.

However, in June 2003, your predecessor, Steve Westly, stated that the "technical tasks involving changing pay for more than 200,000 employees can be accomplished." Based on this statement, it appears that there is a way to implement changes to your computer system to comply with *White v. Davis* and the Fair Labor Standards Act (FLSA).

I urge you to take the necessary steps to make changes to your computer system to comply with state law. My staff is prepared to work with you to develop and implement the necessary mechanisms to comply with the California Constitution, *White v. Davis*, and the Fair Labor Standards Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Debbie Endsley".

Debbie Endsley
Director

PAY LETTER: 10-XX
ISSUE DATE:

**DEPARTMENT OF PERSONNEL ADMINISTRATION
SECTION I**

For questions regarding Section I, call (916) 323-3343
Technical questions will be referred to the Personnel Services Branch

To comply with federal labor law and the California Supreme Court's decision in White v. Davis, in the absence of an approved budget WWG 2, E, and SE classes shall be paid as follows:

All Regular Pay for all employees is delayed until a budget is signed with the exception of the Bargaining Units identified below. Until a Budget is signed employees in Work Week Group 2 and WWG E are eligible for Pay Differential XXX. Employees in WWG SE are not entitled to Regular Pay or the Minimum Wage Pay Differential in the absence of a Budget.

SECTION 14: PAY DIFFERENTIALS

PAY DIFFERENTIAL XXX
WHITE VS. DAVIS NO BUDGET/MINIMUM WAGE PAY DIFFERENTIAL RANK AND
FILE AND EXCLUDED EMPLOYEES is established: (Effective 07/01/10)

Excluded from Minimum Wage Differential:

Bargaining Units 5, 8, 12, 16, 18 and 19

**PAY DIFFERENTIAL XXX
WHITE VS. DAVIS NO BUDGET/MINIMUM WAGE PAY DIFFERENTIAL -
RANK AND FILE AND EXCLUDED EMPLOYEES**

Established: 07/01/10

CLASS TITLE	CB/ID	RATE	DEPARTMENT
All classes with WWG 2 designation with the exception of positions that have a continuous appropriation	R01, R02, R04, R06, R07, R09, R10, R11, R13, R14, R15, R17, R20, R21, S01, S04, S05, S06, S07, S08, S09, S11, S12, S13, S14, S15, S17, S20, U01, U04, U07, U09, U12, U15, U19, E, E97, E98, and confidential employees tied to the above rank-and-file bargaining units.	Rate 1	All Departments
All classes with WWG E designation with the exception of positions that have a continuous appropriation	R01, R02, R03, R07, R09, R10, R11, R17, R21, S01, S02, S03, S04, S06, S07, S08, S09, S10, S12, S11, S14, S15, S17, S18, S19, S20, S21, M01, M02, M05, M06, M07, M08, M09, M10, M11, M12, M13, M14, M15, M16, M17, M18, M19, M20, M21, M21, U01, U02, U09, U10, U19, E97, E98, E99	Rate 2	

RATE	EARNINGS ID
<p><u>RATE 1 -WWG 2</u></p> <p>Full-time employees shall be eligible for:</p> <p style="padding-left: 40px;">\$1,218 for a 21 day pay period \$1,276 for a 22 day pay period</p> <p>Intermittent employees shall be eligible for:</p> <p style="padding-left: 40px;">\$7.25 per hour</p> <p>Daily rate employees shall be eligible for:</p> <p style="padding-left: 40px;">\$58.00 per day</p>	

SECTION 14:

PAY DIFFERENTIALS

RATE	EARNINGS ID
<p><u>RATE 2 - WWG E</u></p> <p>Full-time employees shall be eligible for:</p> <p style="padding-left: 40px;">\$1,971.66 per pay period</p> <p>Intermittent employees shall be eligible for:</p> <p style="padding-left: 40px;">\$11.36 per hour</p> <p>Daily rate employees shall be eligible for:</p> <p style="padding-left: 40px;">\$91.00 per day</p>	

CRITERIA
<p>Employees in classes with a Work Week Group designation of 2 and E are eligible for this pay differential with the exception of employees in Bargaining Units 5, 8, 12, 16, 18, and 19. These bargaining units have a continuous appropriation and will receive their regular compensation.</p> <p>All health benefits will not be withheld from this minimum wage pay differential for 90 days.</p> <p>Group legal will be withheld from this minimum wage pay differential.</p> <p>Miscellaneous deductions will be withheld from this minimum wage payment.</p> <p>Employee's lump sum payments will not be based on this minimum wage payment.</p> <p>Disability payments which occurred prior to July 1, 2010 will not be subject to minimum wage.</p> <p>Supplemental payments for disability will be based on minimum wage as of July 1, 2010.</p>

IF APPLICABLE, SHOULD PAY DIFFERENTIAL BE:	
PRO RATED	Yes
SUBJECT TO QUALIFYING PAY PERIOD	No
ALL TIME BASES AND TENURE ELIGIBLE	Yes
SUBJECT TO PERS DEDUCTION	Yes

INCLUSION IN RATE TO CALCULATE THE FOLLOWING BENEFIT PAY	
OVERTIME	No
IDL	No
EIDL	No
NDI	No
LUMP SUM VACATION	No
LUMP SUM SICK	No
LUMP SUM EXTRA	No



Controller John Chiang
California State Controller's Office

300 Capitol Mall
Sacramento, CA 95814
916.445.2636
www.controller.ca.gov

PR10:20
For Immediate Release:
7/1/2010

Contact: Hallye Jordan
916-445-2636

Controller Issues Statement Regarding DPA Letter

SACRAMENTO – The following statement was issued by the Controller in response to a notice by the Department of Personnel Administration that they were planning on issuing a pay letter ordering the Controller to reduce state employee salaries to the minimum wage, with the exception of the six bargaining units the administration has reached an agreement with.

“I am not surprised that the Governor would issue yet another demand that we cut pay for more 250,000 state employees even while the issue of whether it is feasible to do so has not yet been resolved by the courts. I have made it clear that once the courts hand down a final resolution, I will abide by that ruling.

“In the absence of the leadership needed to bring the Legislature to an agreement on his budget, the governor again resorts to political tricks. Because of the limits of the state’s current payroll system, there is no way that his order can be accomplished without violating the State Constitution and the federal Fair Labor Standards Act. In short, his demands will do nothing to solve the budget deficit, but will hurt taxpayers by exposing the state to billions of dollars in penalties for those violations.

“Unfortunately, the DPA also is mistaken about the position of the previous State Controller about the ability of the state payroll system to make reductions to more than 250,000 paychecks. In a [letter](#) written in July 2004, my predecessor notified legislators that his office ‘had conducted a study and concluded it is not feasible to pay some employees full salary and others minimum wage under the state’s current payroll system.’

“Notwithstanding necessary changes to the State’s labor laws, we continue to work with the Governor on building a system capable of legally reducing wages in the manner sought by his Administration. This system modernization is slated for roll-out in 2012. If the DPA has a problem with that schedule, they should consult the steering committee, of which four of the six members are the governor’s appointees, including DPA Director Debbie Endsley.

“Again, absent a final court ruling, I will continue to protect the State’s finances and pay full wages earned by state employees.”

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