TO: AGENCY HUMAN RESOURCES ADMINISTRATORS

RE: General Letter No. 204 revised – Dual Employment

DATE: May 12, 2014

PURPOSE

This General Letter communicates a legislative change to the dual employment approval process and establishes a uniform statewide dual employment policy to be followed by all Executive Branch state agencies, including colleges and universities. Additionally, this General Letter achieves the following purposes: to announce a new form to initiate the review of dual employment assignments, to advise agencies of the appropriate CoreCT data to consider when determining the overtime implications of potential dual employment assignments, and to provide agencies with all information concerning dual employment in one document. This letter replaces General Letter No. 204 dated July 13, 1999 and all earlier memoranda on this subject.

Effective July 1, 2013, Section 5-208a of the Connecticut General Statutes reads:

No state employee shall be compensated for services rendered to more than one state agency during a biweekly pay period unless the appointing authority of each agency or such authority's designee certifies that the duties performed are outside the responsibility of the agency of principal employment, that the hours worked at each agency are documented and reviewed to preclude duplicate payment and that no conflicts of interest exist between services performed. No state employee who holds multiple job assignments within the same state agency shall be compensated for services rendered to such agency during a biweekly pay period unless the appointing authority of such agency or his designee certifies that the duties performed are not in conflict with the employee's primary responsibility to the agency, that the hours worked on each assignment are documented and reviewed to preclude duplicate payment, and that there is no conflict of interest between the services performed. Any dual employment arrangement that results in the necessity to pay overtime shall be approved in advance by the Commissioner of Administrative Services.

BACKGROUND

A dual employment arrangement arises when an employee is compensated from two (or more) separate jobs within one agency or when an employee works for two or more agencies (including state colleges and universities) at the same time. In general, the designation ‘Primary Job’ is the job in which the employee works the greater number of

hours. If both positions have an equal number of hours, the 'Primary Job' is the position (or CoreCT record) in which the employee was first appointed.

Because dual employment arrangements raise questions about conflicts of interest, duplicate payments and overtime liability and may affect pension and benefit entitlements, agencies are encouraged to assess other options before considering dual employment arrangements.

Only in extraordinary situations will dual employment requests that lead to overtime be approved. These requests will require DAS approval. (Refer to the "DAS Approval" section below.)

All dual employment requests must be approved in accordance with this policy and before the employee begins working in the second position.

POLICY

This policy will address dual employment pertaining to the following:

1. Circumstances when agencies may approve a Dual Employment Request Form (CT-HR-25) without DAS approval;
2. Procedures for agencies to follow when approving and processing dual employment requests at the agency level;
3. Circumstances when DAS must approve Forms CT-HR-25;
4. Procedures for agencies to follow when submitting a CT-HR-25 to DAS for review and/or approval;
5. On-going agency obligations after a dual employment assignment is approved;
6. Core-CT processing; and
7. Addendum containing additional information pertaining to dual employment

Agency Approval

Agencies may approve a dual employment assignment only when both the Primary job and the proposed Secondary job are both determined to be 'Exempt' from overtime under the federal Fair Labor Standards Act (FLSA).

Federal FLSA Status: Primary Job	Federal FLSA Status: Secondary Job	Overtime Obligation Determination
Exempt	Exempt	No overtime

Important: There is not necessarily a correlation between the value in the 'Overtime' field found via CoreCT Job Data (which reflects an employee's eligibility for overtime in accordance with collective bargaining agreement language) and the FLSA. Therefore, a thorough review of the FLSA is required to determine the 'Federal FLSA' value for each job code. This review is currently being conducted by DAS. Agencies will be advised when values have been entered into the Job Code Table. Once the DAS review is complete, a Public Query will be made available for this purpose. Prior to that

time, agencies shall contact DAS Statewide Human Resources Management to determine if a position is Exempt under FLSA.

Regardless of the Federal FLSA values, no dual employment assignment can be approved unless **all** of the following criteria are met:

- The duties to be performed at each agency (or in two positions within the same agency) are outside the responsibility of the other agency (or outside the responsibilities of the other position).
- No conflict of interest exists between or among positions. An Ethics form must be completed by the employee and retained by the Secondary agency.
- The approval of the dual employment assignment will not result in the employee becoming eligible for additional benefits, including but not limited to, eligibility for insurance and/or retirement benefits.
- There will be no duplication of hours between/among positions.
- Agencies must be mindful of any time required to travel from one worksite to another when determining whether there would be any duplication of hours.
- In addition, employees:
  - **Cannot** work in another State job when the Primary job requires mandatory overtime
  - **Cannot** charge paid leave time, i.e., vacation leave, sick leave, compensatory time, personal leave (PL) in order to work in/travel to another State job
  - **Cannot** use unpaid leave or other leave codes to work in/travel to another State job
  - **Cannot** use flextime or an Alternate Work Schedule to work in/travel to another State job if there is an expectation the employee must be available during hours outside of the approved schedule OR if the employee's work schedule reverts back to a standard workweek during a holiday week
  - **Cannot** use the Voluntary Schedule Reduction Program to work in/travel to another State job. Although the employee is working a reduced schedule, benefits, including retirement credit and creditable service, are not diminished and therefore the employee must account for the hours of a full-time schedule

Procedures for Initial Agency Review and Determination

Before making any commitment to the employee:

1. The Secondary agency initiates a Form CT-HR-25 and sends the form to the Primary agency. This is done only after the Secondary agency has reviewed the aforementioned information and determined the above conditions are met.
2. The Primary agency reviews the information provided by the Secondary agency ensuring the above conditions are met, completes the Form CT-HR-25 and returns it to the Secondary agency.
3. The Secondary agency reviews the FLSA status of both positions. If both positions are 'Exempt' then there is no need for DAS to review the request. If either position is

'Non-exempt', the request must be reviewed by DAS to determine the overtime obligation. *See "Procedures for DAS Review and Authorization" section.*

4. In order for a dual employment assignment to be valid, both agencies must approve the Form CT-HR-25. If one agency denies the request, the dual employment assignment is not valid and the employee is not to be appointed to the Secondary job.
5. The Secondary agency communicates the determination to the employee and advises the Primary agency after the employee has been notified. <u>If the Form CT-HR-25 is **not approved**, the employee must not work in the Secondary job</u>.
6. Both agencies must keep a copy of the Form CT-HR-25 on file for post-audit.

No commitment may be made to an employee and no hours may be worked by the employee in the Secondary position unless these conditions have been met and until the approved Form CT-HR-25 is fully executed and on file with the agencies.

<u>DAS Approval</u>

DAS approval of the dual employment request is required when either or both positions are non-exempt under FLSA, using 'Federal FLSA' data.

Federal FLSA Status: Primary Job	Federal FLSA Status: Secondary Job	Overtime Obligation Determination
Non-Exempt	Non-Exempt	Overtime
Non-Exempt	Exempt	Overtime
Exempt	Non-Exempt	Potential Overtime

- All such requests must be reviewed by DAS and situations that could potentially incur overtime will only be approved under **extraordinary circumstances.** In addition to the requirements for approving any dual employment request (see bullets on page 3), with a dual employment request involving one or multiple non-exempt positions, the Secondary agency must demonstrate that the Secondary position is unique, specialized and extremely difficult to recruit.
- The Secondary agency must document its recruitment efforts. Results from those efforts must show the recruitment difficulty. Further, the agency must describe how the employee is uniquely qualified and must indicate the employee possesses special skills necessary for the Secondary position.
- Remember, all criteria listed under the "Agency Approval" section must be met in order to approve a dual employment assignment.

As with any dual employment request, no commitment may be made to an employee and no hours may be worked by the employee in the Secondary position unless these conditions have been met and until the approved Form CT-HR-25 is fully executed and on file with the agencies.

Procedures for Agency Review and Determination after DAS Approval

1. The Secondary agency reviews FLSA status of both positions. If either or both positions are 'Non-exempt', the Secondary agency must request approval from DAS.
2. The Secondary agency determines that the position is highly specialized and/or recruitment difficulties exist by documenting agency recruitment efforts and results of such efforts.
3. The Secondary agency determines that a current state employee (candidate for dual employment) has unique qualifications and special skills necessary for the Secondary position. A copy of the completed Form CT-HR-12 documenting the employee's unique qualifications and special skills necessary for the Secondary position must be obtained from the individual.
4. The Secondary agency initiates a Form CT-HR-25 by reviewing and determining the above conditions are met and sends the form to the Primary agency.
5. The Primary agency reviews the information provided by the Secondary agency and makes its own determination that the above conditions are met, completes the Form CT-HR-25, and returns this form to the Secondary agency.
6. The Secondary agency provides the following to the DAS HR Business Rules Unit:
   - A completed Form CT-HR-25
   - Documented recruitment efforts and results from those efforts, including a copy of the job posting for the Secondary position
   - A completed Form CT-HR-12 from the employee
7. DAS HR Business Rules Unit reviews the documentation and CoreCT data to determine if the employee is involved in any other dual employment assignment. If DAS determines that overtime will be owed and/or if approval will lead to additional benefits, the dual employment agreement will be denied, except under extraordinary circumstances.
8. Important: If the DAS HR Business Rules Unit approves a dual employment situation which would incur overtime, DAS will provide both agencies with the overtime rate.
   - The specific amount and rate of overtime calculated is subject to change based on the number of hours the employee actually works each week.
   - The amount of overtime must be completed manually and on a weekly basis by the agency(s).
9. Before the dual employment assignment can be approved by DAS, the Primary and Secondary agencies must agree who will be responsible for payment of overtime. This requires the fiscal manager of the agency(s) responsible for the payment of overtime to review and sign the applicable section of the Form CT-HR-25. If both agencies are to pay the overtime cost, both fiscal managers must sign.
10. In order for a dual employment assignment to be valid, all agencies involved in the process, including DAS, must approve the Form CT-HR-25. If one agency denies the request, the dual employment assignment is not valid and the request is considered to be denied. In this case, the employee must not work in the Secondary position.
11. The Secondary Agency communicates the determination to the employee as well as the estimated overtime rate of pay, if applicable.

12. Both the Primary and Secondary agencies are required to keep a copy of the Form CT-HR-25 on file for DAS post-audit.

Agencies' Continuing Obligations

Both the Primary and Secondary Agencies have an on-going obligation to ensure the dual employment assignment meets the criteria listed on Page 3.

In order to ensure there will be no duplicate payment or duplicate hours of work while an employee is working in an approved dual employment assignment, agencies must be especially diligent when approving work schedule changes and granting time off to an employee who is dually employed.

Agencies must also review very carefully changes in job title, duties and federal FLSA status and communicate these changes to the other agency in advance. In particular, agencies must complete the Form CT-HR-25 and ensure compliance:

- Upon a change in the employee's job title and/or responsibilities
- Upon a change in the employee's hours of work
- Upon a change in the employee's alternate or flexible work schedule
- Upon a change in the employee's telecommuting arrangement
- Upon a change in the employee's work schedule under the voluntary schedule reduction program
- Upon any other change that may impact on FLSA designation or rate of pay due to hours worked in the Secondary assignment
- Upon any change in the work schedule of either position.

If, at any time, the dual employment assignment fails to meet the criteria listed on Page 3, the assignment must be terminated.

If any changes involve or create the potential of an overtime obligation or benefit implication, the agency implementing the overtime must follow the procedures for requesting DAS review and approval of the dual employment assignment.

Length of Assignment/Renewal

- Dual employment is limited to a specific period of time not to exceed six months. Assignments with colleges and universities must be approved before the start of a new course and prior to the start of each new semester. This means the Secondary position must end after six calendar months (or sooner) and that the employee's employment with the Secondary agency is terminated at that time.
- If an assignment is to be renewed, the Secondary agency must again obtain from the employee's Primary agency an approved Form CT-HR-25 for the new 6-month period before rehiring the employee on a temporary basis. These transactions must be recorded via CoreCT records. (See the "Core-CT Processing" section.)

CORE-CT PROCESSING

Following receipt of the approved Form CT-HR-25, the hiring agency effectuates the dual employment assignment by entering the transaction via Core-CT.

From the CoreCT HRMS Job Aid titled, "Hiring an Employee":

- You will need to hire the employee by navigating to: *Workforce Administration* > *Job Information* > *Add Employment Instance*. Once "Job Data" opens you will notice the **Empl Rcd** will be higher than '0'. If the original job will stay as 'Primary', your job will need to be set as 'Secondary' in the **Job Indicator** field. The action will be 'Hire' and the reason will be 'Dual Employment'. All other information for "Job Data" will be completed the same as any new hire into your agency. Once you have saved "Job Data", you will have access to his/her "Personal Information".

  If the record you are hiring into has an Empl Rcd higher than '1', then the Secondary agency must contact the DAS HR Business Rules Unit to determine (a.) whether or not another record may be used for the transaction and (b.) if the employee is already an Active employee in more than one position. Special Note: if dual employment is being considered for an employee who already has more than one job, approval from the DAS HR Business Rules Unit is required prior to the approval of the Form CT-HR-25.

If the hiring agency will be the Secondary agency:

i. See Hire/Rehire and Hiring an Employee Job Aids
ii. Choose 'Hire – Dual Employment' rather than 'Hire – Employ' for the Action – Action Reason codes
iii. Ensure the Job Indicator field is set to 'Secondary'
iv. Enter Appt End Date of six (6) months or less

If the hiring agency will be the Primary agency:

i. Contact the employee's current agency to communicate the dual employment assignment and to ensure they understand they will become the Secondary agency
ii. The current agency must enter a 'Data Change – General Data Change' transaction into Core-CT and must change the Job Indicator field from 'Primary' to 'Secondary'

Once the Secondary assignment ends, Job Data must reflect the termination using the 'Non-perm Appt Ended' reason code.

IMPORTANT

As previously mentioned, it is imperative all agencies involved with a dual employment arrangement with an Executive Branch employee comply with this policy, with the US Department of Labor Fair Labor Standards Act, with the Connecticut Department of

Labor (Wage and Hour Division) statutes and regulations, and with the collective bargaining agreements.

POST-AUDIT

The DAS HR Business Rules Unit will periodically coordinate a post-audit of Dual Employment transactions for employees holding multiple positions in State service. A list of all employees who are actively employed in more than one position will be provided to each impacted agency either by the DAS HR Business Rules Unit or via Public Query, following completion of the 'Federal FLSA' review.

Again, it is critical that all dual employment assignments are reflected promptly in CoreCT. It is particularly important to enter a 'Termination – Non-perm Appt Ended' transaction upon completion of an approved Secondary assignment.

HR Professionals should direct questions concerning specific Dual Employment situations to the DAS HR Business Rules Unit. Employees are to address questions to the Agency Human Resources Office of their employing agency.

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Director – Statewide HR Management

14-02

General Letter 204 (revised 4/2014)
Addendum:

Preliminary Steps Prior to Entering into a Dual Employment Agreement:
Agencies must ascertain during the interview process whether or not a candidate is currently employed by the State of Connecticut and, if so, whether or not continued employment in the current position is being contemplated by the employee. It is important to remind applicants that employment with a state college or university is employment with the State of Connecticut. It is also imperative to inform the employee that a thorough review of FLSA regulations and work schedules will need to be conducted and approval from both agencies (and DAS, as appropriate) must be received prior to being offered a second position.

Temporary Worker Retiree:
If an employee is a retiree, entering into a dual employment situation must not impact the retiree's pension. Specifically, the combined number of hours must not exceed 960 in a calendar year.

Determine the Overtime Rate of Pay:
In accordance with FLSA Regulations, when each position held with one employer has a different rate of pay and when hours over 40 in a week are subject to overtime, the Overtime Rate is to be based on the "weighted average" of both rates of pay. This means the average weekly gross pay of both positions divided by the number of hours worked in both positions. **The agencies involved in the dual employment assignments must communicate with one another to ensure correct payment of overtime to eligible employees. This communication requires a weekly review of all hours worked by the employee and also requires a manual calculation be performed for payment**

Calculation:
a.) Job 1 # Hours x Pay Rate + Job 2 # Hours x Pay Rate = Total Straight-time Pay
b.) Total Straight-time Pay / Total Hours = Weighted Average Regular Rate of Pay
c.) Weighted Average Regular Rate of Pay / 2 = Sub-total
d.) Sub-total from 'c.' x Hours over 40 = Total Overtime Amount

Reason: FLSA requires the payment of overtime at time and one half for hours worked over 40 in a week to eligible employees. The hours over 40 have already been paid as straight time by each agency; now the additional "half" must be added to the straight time already paid, using the weighted average rate.

Benefits associated with the Secondary Position:
An employee who is dually employed should not serve a working test period and therefore should not attain permanent status in the Secondary position. If there is even a slight chance the employee may be eligible to receive benefits in a Secondary position, DAS must approve the dual employment request prior to the employee working

for the Secondary agency. As a result, the employee would not be eligible for benefits associated with permanent status:

- The employee is not eligible to receive Personal Leave (PL) days in the Secondary position.
- Time served in the Secondary position is not credited for the purpose of seniority for any purpose, including longevity.
- Group Health, Dental and Life Insurances are not available to an employee in the Secondary position.
- The employee is not eligible to participate in any programs where permanent status is required.
- The Secondary agency is responsible for ensuring a dually-employed employee does not work more than 20 hours in the Secondary position.
- Vacation leave does not accrue for the Secondary position.
- Sick leave does not accrue for Secondary position.
- Salary from the Secondary position may be included in the calculation of an employee's retirement benefits, in accordance with the State Employees Retirement System.
- When an agency ends the dual employment assignment, the employee has no reemployment rights to positions in the (Secondary) job class as permanent status in the (Secondary) job class is not attained.

Additional References:

To assist with proper administration the following resources are made available here:

- Federal Department of Labor Wage and Hour Division - Fact Sheet #54 – The Health Care Industry and Calculating Overtime Pay
- Federal Department of Labor website link to Wage and Hour Division - Fair Labor Standards Act site
- State of CT Department of Labor Wage and Hour Division - Exempt/Non-Exempt Employees for the Purposes of Wage and Hour Laws
- The current collective bargaining agreements for 13 of the State employee bargaining units in the Executive Branch are found via the Office of Labor Relations Website - Collective Bargaining Agreements
- CoreCT HRMS Job Aids are found via the CoreCT Website - http://www.core-ct.state.ct.us/hr/human_resources/hr_jobaids.htm
- Ethics Website