



DATE: January 27, 2015

TO: Will Lightbourne, Director, Department of Social Services
FROM: SEIU California; UDW/AFSCME Local 3930; CUHW
CC: Kevin de León, President Pro Tempore, California State Senate
Toni Atkins, Speaker, California State Assembly

RE: Implementation of SB 855

We are writing to reiterate our grave disappointment with the State's decision to halt implementation of FLSA protections – including overtime pay - for IHSS workers in California as a result of the injunction issued in the *HCA v. Weil* litigation.

Further, we object to the decision by CDSS that it will not require the recording of weekly provider overtime hours, travel time between recipients or time spent in medical accompaniment in CMIPS II. We also object to your decision to discontinue provider training on the new timesheet format. We urge you to reconsider these actions and fully implement the new timekeeping requirements.

First, the decision of the district judge in the *HCA v. Weil* is not the final word on the fate of the new FLSA regulations. On January 22nd, the Department of Labor has filed an appeal of the decision. In the event of a reversal on appeal, or of a contrary ruling by a court in other litigation, it may well be that the new regulation will go into effect and the State will be required to pay overtime compensation retroactive to the original implementation date. It would be shortsighted of the State not to implement the timekeeping procedures within CMIPS II necessary to comply with such a remedial order.

Second, as we have argued elsewhere, even if the implementation of the new regulation remains enjoined, there is nothing to prevent the State from independently implementing the overtime requirements. Indeed, immediate implementation is required by state law. During the legislative process leading to enactment of SB 855, the stakeholders specifically discussed the possibility of a delay in the implementation of all or part of the FLSA regulation. During those discussions, the administration committed to implementing the overtime requirements even in the face of such a delay as long as federal fund participation is available, and there is every reason to believe that it is. This commitment is reflected in several ways in both the statute and legislative record.

Finally, it makes no sense to discontinue training on the new timesheet format. It is the Department's responsibility to ensure that all IHSS providers are properly trained on the new timesheet regardless of when the overtime requirement is ultimately implemented. Further, even with the overtime requirements redacted, the timesheets are still new and



require workers to input their hours in a way that is different than they are used to. For example, per HP, 30 percent of timesheets are being submitted with the instructions portion still attached, which is causing processing delays. Workers who do not submit

properly recorded timesheets suffer from a significant delay in receiving their wages and the Department will be responsible for that delay if providers are not adequately trained on how to use the timesheets. It is unacceptable that the Department would allow for the delayed payment of wages to providers. We are aware that this is currently happening to many providers and urge the Department to fulfill its responsibility in this area.

We respectfully request that the Department reconsider its position and implement the recordkeeping procedures mandated by SB 855.