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BOARD OF TRUSTEES Official Resolution No. 2019-42

“RELATIVE TO EXTENDING HAZARDOUS PAY TO ALL GMHA EMPLOYEES WHILE PERFORMING DUTIES AT THE DEPARTMENT OF CORRECTIONS”

WHEREAS, Title 4 G.C.A. Section 6222(a), provides, in relevant part, that “any employee of the government who performs the duty of guarding prisoners or supervising or counseling parolees, shall be entitled to hazardous pay, calculated at the rate of his or her regular wage, plus ten percent (10%), for all periods he or she is on such duty. The differential shall be applicable only during the time of exposure.”

WHEREAS, the Department of Administration’s 1996 Personnel Rules and Regulations Appendix D (Hazardous/Environment Pay Policy) defines the parameters of hazardous pay and states, in relevant part, that “any employee of the government who performs the duty of guarding prisoners in transit, **or is otherwise exposed to a life-threatening environment with respect to incarceration of prisoners** shall be entitled to hazardous pay for all periods he or she is on such duty. The differential shall be applicable only during time of exposure.” (Emphasis added).

WHEREAS, the Office of the Attorney General Opinion Memorandum Ref No. DOC 16-0015, dated January 21, 2016, and attached herein (“OAG Opinion”), determined the allowance for hazardous pay under 4 G.C.A, Section 6222(a) and DOA rules for “those GMH health care employees whose base salaries do not reflect the inherent dangers of working in a correctional setting, which is a highly dangerous environment.”

WHEREAS, the OAG Opinion concluded that classified employees of the GMHA are entitled to hazardous pay while working at the Department of Corrections Mangilao and Hagatna prison and detainee facilities.

WHEREAS, GMHA Board of Trustees (the “Board”) recognizes that all GMHA employees – whether classified or unclassified – are exposed to a life-threatening environment while working at the Department of Corrections Mangilao and Hagatna prison and detainee facilities.

NOW, THEREFORE, BE IT RESOLVED, the Board has determined it to be in the best interests of the GMHA to extend the 10% hazardous pay differential provided by Title 4 G.C.A, Section 6222(a) and DOA rules to all classified and unclassified employees of the GMHA while working at the Department of Corrections Mangilao and Hagatna prison and detainee facilities.

BE IT FURTHER RESOLVED, that the Chairperson certifies and the Secretary attests to the adoption of this resolution.

DULY AND REGULARY ADOPTED ON THIS 21st DAY OF AUGUST 2019.

Certified by:

Theresa Obispo
Chairperson

Attested by:

Sarah Thomas-Nededog
Secretary



Office of the Attorney General of Guam

590 S. Marine Corps Dr., Ste. 706, Tamuning, Guam 96913



January 21, 2016
Ref: DOC 16-0015

OPINION MEMORANDUM

TO: Director, Department of Corrections

FROM: Attorney General

SUBJECT: **Hazardous Pay for Guam Memorial Hospital Employees Working at DOC Clinic**

This office is in receipt of your letter dated January 14, 2016, in which you requested an opinion on the following issue:

REQUEST: Are Guam Memorial Hospital (GMH) employees entitled to hazardous pay while performing duties at the Department of Corrections (DOC) clinic?¹

ANSWER: Yes.

STATEMENT OF FACTS:

As a result of the Stipulated Judgment in the District Court case of *United States v. Government of Guam*, Guam District Court Civil Case No. 91-00020, DOC and GMH entered into a Consolidated Cooperative Agreement ("Agreement"), effective June 26, 2015, for the provision of health care services to the Department of Corrections' Clinic ("DOC Clinic"). Classified employees from GMH, such as registered nurses, LPNs, certified nurse assistants, ward clerks, clerks, medical records personnel, pharmacists, and pharmacy technicians have been performing medical duties at the DOC Clinic in conformity with efforts to assure full compliance with the Stipulated Judgment.

The DOC Clinic is housed in two locations under the control of DOC: the Mangilao and Agana facilities. Due to the nature of the medical services being provided (medical intake, health records, sick call, screening, etc.) and the size and layout of both facilities, GMH employees are in close proximity and often face-to-face with incarcerated inmates and detainees. Additionally,

¹ The request addressed "non-contractual" employees, but upon further discussion with the agency, the intent of the request was to address primarily the classified staff of GMH. Classified employees from other agencies may also be called upon to perform services at the DOC Clinic; however, we have not been requested by those agencies to specifically address similar concerns. This opinion, therefore, is applicable only to the classified employees of the Guam Memorial Hospital.

employees are often called upon to administer medication, collect and respond to sick call requests, and to respond to medical emergencies at various residential posts and other areas within the prison and lock-up facilities.

The intent of the Agreement between DOC and GMH was to establish a fully operational medical clinic within the jurisdiction of the DOC that would comport with all standards for prisoner health care as required by the National Institute of Corrections and the National Commission on Correctional Health Care. Inter-governmental processes and procedures were established for the operation of a fully functioning correctional medicine outpatient clinic, never heretofore administered nor embodied within the GMH. As a result, GMH questioned the entitlement of its staff to hazardous pay, a benefit normally accruing to law enforcement work. GMH has declined, under funding provided pursuant to the Agreement, to compensate its nurses or on-call staff for work performed at the DOC Clinic without clear direction that hazardous pay is legally allowable.

DISCUSSION:

Title 4 G.C.A. § 6222(a) governs generally entitlement to hazardous pay as follows:

“A corrections officer or a parole officer or *any employee* of the government who performs the duty of *guarding prisoners* or supervising or counseling parolees, shall be entitled to hazardous pay, calculated at the rate of his or her regular wage, plus ten percent (10%), for all periods he or she is on such duty. The differential shall be applicable only during the time of exposure” (emphasis added).

Historically, hazardous pay was first recognized as compensation due for work solely involving the guarding of prisoners or for those positions requiring close proximity to prisoners or detainees. It was expanded by health statutes and personnel regulations to cover other forms of hazardous conditions related to dangerous environmental conditions and temporary exposure to life-threatening situations. For purposes of this opinion, we focus only on conditions related to the traditional role of government work done in proximity to inmates and detainees within a prison or jail setting, and more specifically, to the work of medical personnel from GMH working in a correctional health care clinic.²

With regard to hazardous pay related to the “guarding of prisoners” referred to in Section 6222(a), the Department of Administration’s (DOA) 1996 Personnel Rules and Regulations APPENDIX D (Hazardous/Environment Pay Policy) define the parameters of such pay in the following manner:

² This opinion does not apply to law enforcement personnel whose base pay incorporates the inherent hazardous nature of law enforcement work in the first instance, as well as recent across-the-board pay increases for all law enforcement positions within the government of Guam.

GUARDING OF PRISONERS

A Uniformed Officer *or any employee of the government* who performs the duty of guarding prisoners in transit, *or is otherwise exposed to a life-threatening environment with respect to incarceration of prisoners shall* be entitled to hazardous pay for all periods he or she is on such duty. The differential shall be applicable only during time of exposure (emphasis added).

The regulatory interpretation by DOA is consistent with the long history of defining the numerous situations where government employment involved work in close proximity to prisoners, whether or not it specifically involved guarding, security, or the supervision of prisoners. This interpretation permitted law enforcement agencies greater flexibility and usage of hazardous pay for purposes of compensating government employees who, by virtue of their proximity to prisoners, faced life-threatening conditions. Working at the DOC Mangilao and Agana prison and detainee facilities is inherently dangerous. Therefore, compensation to the class of positions providing medical care in prisons/jails must include compensation for the inherent danger associated with such duties and responsibilities, which differ greatly from the administration of medical care to the general population.

Throughout the United States, there are numerous accounts of nurses and medical personnel working alongside corrections officers in very violent, dangerous and stressful jail and prison work environments. Some recent examples include incidents of attacks on nurses at jails in Missouri's Saginaw County, California (Costa County), and Mahoning County in Youngstown, Ohio. Injuries to nurses have also been reported in prison settings at Central Prison in North Carolina and Folsom State Prison in California.

Prison health care is an emerging, although not yet fully developed field, across the nation and on Guam. Compensation to address the hazards related to working within a prison/jail setting is necessarily unaccounted for within the normal base pay structure for health care professionals not otherwise employed full time by DOC. The allowance for hazardous pay under the statute and DOA rules provide special compensatory benefits to those GMH health care employees whose base salaries do not reflect the inherent dangers of working in a correctional setting, which is a highly dangerous environment.

CONCLUSION:


We support the sound definitions of hazardous conditions incorporated into DOA's personnel regulations, and believe they are consistent and comport with the overall intent of the statutes and the history of hazardous pay compensation within a correctional system. It is therefore our opinion that under 4 G.C.A. § 6222(a) and DOA's Personnel Rules and Regulations, classified employees of GMH including registered nurses, LPNs, certified nurse assistants, health administrators, ward clerks, clerks, medical records personnel, pharmacists, and

pharmacy technicians are entitled to the payment of hazardous pay at the rate of ten percent (10%) for all periods on duty at the DOC facilities. A copy of Executive Order No. 2001-10 (GMH's adoption of DOA Personnel Rules and Regulations) is attached hereto as Attachment 1.

Such compensation is legally allowable, and GMH classified employees are entitled by law to hazardous pay accruing, as of June 26, 2015, the effective date of the Agreement between DOC and GMH.

THIS IS AN OPINION OF THE ATTORNEY GENERAL OF GUAM. IN MAKING ANY INQUIRY TO OUR OFFICE IN REGARD TO THIS OPINION PLEASE USE THE REFERENCE NUMBER SHOWN.

OFFICE OF THE ATTORNEY GENERAL

By: 
ELIZABETH BARRETT-ANDERSON
Guam Attorney General

Enclosure: Attachment 1

cc: Dr. Larry Lizama, DOC Medical Director and
Acting GMH Hospital Administrator
Zennia Pecina, Clinical Administrator
Director of Administration