

Per Diem Overtime Class Action Grievance Settlement Agreement 2024

ARE YOU AFFECTED?

Currently employed CRNAs at KP who worked in Per Diem Status between October 1, 2021, and the present.

HISTORY Timeline

May – September 2021 Bargaining

KP refused to bargain the KPNAA-SCMPG Pay Practice Document during 2021 bargaining. The Pay Practice was last bargained in 2018. The 2018 Pay Practice Agreement allowed Per Diems to work 40 hours in a week at their regular wage rate and receive 1.5x their regular wage rate of pay over 40 hours in a work week. The Pay Practice expired September 30, 2021.

October 1, 2021 – Present: Hourly Wage Rates

Due to the employer's unwillingness to bargain a new Pay Practice with KPNAA during 2021 bargaining, the employer is forced to pay Per Diems per California law. KPNAA filed a class action grievance on behalf of its membership. This Settlement Agreement settles this grievance and all action KPNAA may take on behalf of its membership under the CBA. In exchange, the affected CRNAs will receive the overtime payments they are owed under California law.

The Settlement Agreement

The Settlement agreement reached by KPNAA on behalf of ALL current CRNAs employed at KP in a Per Diem status during any time from October 1, 2021 – present:

The Employer will pay each of the Employees the agreed upon overtime hours for which they were not paid, less all required payroll withholdings and deductions.

The calculation of overtime pay shall be based on the rates required by California law as listed below and take into consideration any wage increases employees received from October 1, 2021, until the date of payment.

CA State Overtime Rates:

Hours exceeding 8 in a shift: 1.5 x wage rate

Hours exceeding 12 in a shift: 2.0 x wage rate

KPNAA included the ALLIANCE 2% Lump Sum in the Settlement: The Employer will adjust the amount of the Alliance-negotiated 2% lump sum paid to all Employees who were employed on or after October 1, 2023, to reflect all compensation for hours worked by the affected Employees from October 1, 2022, through September 30, 2023.

What's Next?

The Association and the Employer will create an oversight committee consisting of Employer and Association representatives to develop a mutually agreeable list of current Employees who worked overtime hours during the period October 1, 2021, until the date of payment as well as the number of hours each such employee worked. The oversight committee will meet and provide a finalized list that includes affected Employees and overtime hours worked.

Oversight Committee Members for KPNAA

Kathleen Theobald, MA, KPNAA Executive Director
Becky Ashlock, DNP, CRNA, KPNAA Past President

Timeline

February 21, 2024: First meeting of the Oversight Committee

April 22, 2024: Final employee list, overtime hours worked, calculations of money owed

May 2, 2024: The Employer will pay each of the Employees the agreed upon overtime hours for which they were not paid, less all required payroll withholdings and deductions, within ten (10) business days after the list is finalized.

URGENTLY IN PROCESS: KP and KPNAA verifying that the time system will be paying Per Diems correctly as soon as possible.

ACTION: IF YOU ARE AFFECTED: TO DO PRIOR TO April 22, 2024:

KPNAA is asking CRNAs who worked in a Per Diem status October 1, 2021 - present to:

1. ACCESS your timecards from October 1, 2021 – present (ongoing until we verify the time system is paying you correctly)
2. Document “Clock in and Clock out times”
3. Document dates and times hours worked in a shift over 8 hours.
4. Document dates and times hours worked in a shift over 12 hours.

How Do I Get Paid?

Employee's Release of Claims.

Payments to Employees shall be conditional on these Employees executing a release of all related claims against the Employer and the Association. In the event an Employee does not execute a release, the Employee will not receive a payment and will not be covered by this Agreement but retains all rights to pursue any wage claim(s) under California law.

In consideration for the Payments, the Association will release the Employer and any of the organizations participating in the Kaiser Permanente Medical Care Program (including, but not limited to Kaiser Foundation Health Plan, Inc., and Kaiser Foundation Hospitals), and their respective subsidiaries, agents, officers, directors, and employees ("the

Releasees"), from any and all claims related to the Grievance as well as all claims for alleged missed overtime payments up to the date the Association's authorized representative signs this Agreement and the affected Employee executes such a release. This release includes, but is not limited to, all claims based on the Fair Labor Standards Act, the California Labor Code, IWC Wage Orders and any regulations implementing those laws or orders. The release shall be effective upon the affected Employee's execution of the release.

What if I do not sign the release?

If you choose not to sign the release, you will not receive a payment under this settlement. Your options then are to hire an attorney and file a lawsuit against the employer, or seek payment from the California Labor Commissioner, if you choose.

What if it does not happen or something goes wrong?

No statute of limitations on any claim related to the Grievance or overtime payments under the Fair Labor Standards Act, California Labor Code, IWC Wage Orders, or any other law or regulation relating to overtime shall continue to run against any Employee or the Association until payment of the amounts are accurately completed.

In the event mutual agreement on the amount of back pay is not reached and full payments are not made under this Agreement, the parties shall be returned to their respective positions as of December 15, 2023.

This means – KPNAA will continue to pursue the payments, but because the payments are owed under California law, KPNAA may not be able to resolve the matter under the CBA.

FAQs

Per Diem Pay FAQs

1. There is no "pyramiding" of overtime hours.
2. Shift Hours Overtime, per the Settlement Agreement:

Hours exceeding 8 in a shift: 1.5 x wage rate

Hours exceeding 12 in a shift: 2.0 x wage rate

3. Weekly Overtime:

Only hours worked at regular wage rate apply to the weekly 40-hour limit.

This prevents "pyramiding" of overtime, where an employee earns overtime on top of overtime already paid.

EXAMPLES

All examples assume all shifts are worked in the same week.

CRNA #1 worked four eight-hour shifts and one ten-hour shift in a week.

Shift 1 - 4: (4)8 hours regular wage rate = 32 hours regular wage rate

Shift 5: 8 hours regular wage rate
2 hours at 1.5 x regular wage rate

Weekly Pay: 32 + 8 = 40 hours at regular wage rate
+ 2 hours at 1.5x regular wage rate

CRNA#2 worked four 10-hour shifts and one 2-hour shift. Do I get eight hours at 1.5 AND 2 hours at 1.5 or?

No. Pyramiding of overtime is not allowed.

Shift 1-4: (4)8 hours regular wage rate = 32 hours regular wage rate
(4)2 hours at 1.5x wage rate = 8 hours

Shift 5: 2 hours at regular wage rate wage rate

Weekly Pay: 32 + 2 = 34 hours at regular wage rate
+ 8 hours at 1.5x regular wage rate

CRNA#3 worked five 10-hour shifts.

Shift 1-5 (5)8 hours regular wage rate
(5)2 hours at 1.5x regular wage rate

Weekly Pay: 40 hours regular wage rate
+ 10 hours at 1.5x regular wage rate.

CRNA#4 worked three 16- hour shifts and one 24-hour shift.

Shift 1-3 (16 hours) (3)8 hours regular wage rate = 24 at regular wage rate
(3)4 hours at 1.5x regular wage rate = 12 at 1.5x regular wage rate
(3)4 hours at 2.0x regular wage rate = 12 at 2.0x regular wage rate

Shift 4 (24 hours) 8 hours regular wage rate
4 hours at 1.5x regular wage rate
12 hours at 2.0x regular wage rate

Weekly Pay: 24 + 8 = 32 at regular wage rate
+ (12 + 4) = 16 at 1.5x regular wage rate
+ (12 + 12) = 24 at 2.0x regular wage rate

Questions and Answers

Q: Will my DA stop scheduling me over 8-hours in a shift?

A: Per the Settlement agreement, KPNAA and the employer have agreed to discuss how per diem certified registered nurse anesthetists will be scheduled and paid going forward.

Currently, scheduling of Per Diems over 8 hours in a shift is a decision made by your DA and local facility leadership.

Q: How does this work for Holidays worked?

A: A CRNAs “regular rate of pay” on holidays is 2.5x their regular rate of pay. If a CRNA works 16 hours on a holiday, their pay would be as follows:

- 8 hours at 2.5x regular rate
- 4 hours at 1.5x (2.5x regular rate)
- 4 hours at 2.0x (2.5x regular rate)

Q: Is the documenting of our hours worked from our timecards something that we turn into the union?

A: No. This information is for you to compare against the final numbers the oversight committee determines for you. KPNAA will work to make sure the settlement is fair, but ultimately, the person who knows the number of hours you worked best is you. KPNAA will be having more tele-town halls to speak with members as the process moves forward.

Q: If Per Diems wanted to work longer shifts but are no longer being offered them due to the employer not wanting to pay overtime, is there a possibility an individual can sign a contract to be exempt from CA labor laws?

A: No. As part of the Settlement Agreement, the Employer and the Association agree to discuss how per diem certified registered nurse anesthetists will be scheduled and paid going forward. Anything that is outside of California law would have to be brought to the membership for a vote.

Q: Once we see overtime on our paychecks for over 8-hour and 12-hour shifts, we don't have to track those hours anymore because KP will be in compliance with CA law at that point?

A: Correct.

Q: How is the Lump Sum figured?

A: The lump sum will be based on earnings you receive from October 1, 2022, through September 30, 2023.

Q: I clocked in and out at odd times and I only have .8 hours of overtime? Does that count?

A: Yes. Any amount of time worked over 8 hours in a day or 40 hours in a week counts as overtime.

Q: What about meal breaks?

A: As a Per Diem, you clock in and out for meals and breaks and that time would not be part of your calculation. Off-duty meal breaks are not considered time worked under California law.

Q: If someone worked as a Per Diem for KP since 10/1/21 but left KP during 2023, are they still qualified for this settlement? If not, how might they recover this wage adjustment if they are on their own?

A: No. Only currently employed CRNAs at KP are covered by this Settlement Agreement as the class actions are filed by KPNAA on behalf of current membership. To recover monies owed to you by an employer you are no longer employed by:

First: Contact KP Human Resources and inform them you have heard about this class action grievance resolution under the collective bargaining agreement and ask for your back pay per California law as a prior employee.

Second: If a response and resolution is not achieved, a prior employee may file a complaint with the California Labor Commissioner, which enforces wage claims, or a private lawsuit.