

Ohio Department of Administrative Services
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MEMORANDUM

TO: HR Administrators and Labor Relations Officers of All Departments,
Institutions, Boards and Commissions

FROM: Hugh Quill, Director, Department of Administrative Services 

DATE: January 15, 2010

RE: Overtime Compensation to Overtime Exempt Employees

The Department of Administrative Services ("DAS") recently became aware that some agencies may be paying overtime to certain employees who are both exempt from collective bargaining and exempt from the overtime provisions of the federal Fair Labor Standards Act ("FLSA"), 52 Stat. 1060, 29 U.S.C. 207, 213, as amended. The purpose of this memorandum is to give guidance to agencies to ensure statewide standardization on the payment of overtime to these employees. If agencies decide to pursue payment of overtime to these employees, this memorandum sets forth the required process they must pursue with DAS.

Employees who are exempt from collective bargaining and are exempt from the overtime pay provisions of the FLSA should not, as a rule, be eligible to receive overtime compensation. Employees are determined to be exempted from the payment of overtime compensation under the criteria for exemptions established in the FLSA. Per Ohio Revised Code section 124.18(A), overtime cannot be paid to any employee unless it has been approved by the employee's appointing authority. Further, under section 124.18(A), if an appointing authority determines to establish a policy granting compensatory time or to pay overtime compensation to state employees exempt under the FLSA, **the agency must seek the approval of the Department of Administrative Services.**

Agencies must always be cognizant of the need to be accountable to the state's taxpayers. This is particularly true in challenging economic times. However, there may be unique situations where overtime payment for overtime exempt employees would be warranted. These may be situations where the appointing authority has a 24-hour operation and the affected employees must work overtime because of direct care, safety, or security reasons. Generally, issues such as salary compression or recruitment and retention are not sufficient justification to pay overtime to overtime exempt employees.

In order to limit the payment of overtime to those extraordinary situations where warranted, agencies should first consider a variety of options available at their disposal. Included among these options is flextime. A flextime policy allows an employee to work extra hours on one day to make up for shorter hours worked on another day in order to limit overtime payment for hours worked over 40 in a week or 80 in a pay period.

Additionally, appointing authorities should strongly consider allowing overtime exempt employees to accrue compensatory time. As noted in previous guidance and DAS directives, compensatory time alleviates concerns related to pay compression, rewards exempt employees for the extensive number of hours they work on behalf of the state, and allows the state to accurately maintain and track hours worked by a particular employee.

DAS Directive HR-D-08 provides additional guidance on compensatory time. Per this directive, overtime exempt employees accrue compensatory time for any time over 40 hours a week they were required to be



Memo to HR Administrators and Labor Relations Officers
Re: Overtime Compensation to Overtime Exempt Employees
January 15, 2010 -- Page 2 of 2

in active pay status. Consistent with DAS Directive HR-D-08, the maximum amount of compensatory time that an overtime exempt employee may accrue is 120 hours. However, please note that due to recent legislative changes found in section 124.18 of the Revised Code, any compensatory time accrued by an overtime exempt employee must be used within 365 days after accrual. Agencies must adhere to these standards and may not adopt a policy that either allows the employee to accrue hours above the 120-hour maximum or retain leave longer than the 365-day timeline.

Agencies are still advised that they may not adopt an alternative policy that grants compensatory time to employees only after they have been required to work an additional number of hours (i.e. 45 hours/week, 50 hours/week, etc.) However, agencies may adopt a policy that allows overtime-exempt employees to work a flexible work schedule within a pay period instead of within a week. Such a policy has the potential to limit the amount of compensatory time accrued by an individual employee, but would provide the employee with similar resulting benefits.

Per the Ohio Revised Code, agencies must receive prior approval from the Department of Administrative Services prior to adopting and implementing a policy allowing overtime exempt employees to be paid overtime. If, after a review of the considerations noted above, an agency finds there are extraordinary circumstances warranting the payment of overtime to overtime exempt personnel, agencies must submit a proposed policy to the Department of Administrative Services, HRD Office of Policy Development, for their approval prior to adopting or implementing a policy allowing overtime exempt employees to be paid overtime. Agencies who are currently paying overtime to overtime exempt employees must **immediately** submit their current policies to the Office of Policy Development for review.

At a minimum, the following must be submitted:

- An official letter of request, signed by the director or appointing authority of the agency, requesting approval of the policy;
- A policy containing:
 - The positions or classifications of exempt employees eligible to receive payment for overtime and the duties performed by those exempt employees;
 - The criteria the agency will use to select individual employees, positions, or classifications eligible to receive payment for overtime;
 - Specific hours, days per week, times of the year, etc., that employees, positions, or classifications of exempt employees eligible to receive payment for overtime could receive overtime;
 - Justification of the need for the payment of overtime, including an analysis of the reason alternative means are not appropriate.

Agencies have until Friday, February 12, 2010 to implement the requirements of this memorandum and ensure any agency-specific policies or procedures are in compliance and have been submitted to DAS for approval. If you have any additional questions, please contact the Department of Administrative Services, HRD Office of Policy Development at (614) 752-5393 or DASHRD.HRPolicy@das.state.oh.us.

c: Directors of Agencies, Boards and Commissions

124.18 Standard work week - compensatory time - overtime pay - holidays.

(A) Forty hours shall be the standard work week for all employees whose salary or wage is paid in whole or in part by the state or by any state-supported college or university. When any employee whose salary or wage is paid in whole or in part by the state or by any state-supported college or university is required by an authorized administrative authority to be in an active pay status more than forty hours in any calendar week, the employee shall be compensated for such time over forty hours, except as otherwise provided in this section, at one and one-half times the employee's regular rate of pay. The use of sick leave or any leave used in lieu of sick leave shall not be considered to be active pay status for the purposes of earning overtime or compensatory time by employees whose wages are paid directly by warrant of the director of budget and management. A flexible-hours employee is not entitled to compensation for overtime work unless the employee's authorized administrative authority required the employee to be in active pay status for more than forty hours in a calendar week, regardless of the number of hours the employee works on any day in the same calendar week.

Such compensation for overtime work shall be paid no later than at the conclusion of the next succeeding pay period.

If the employee elects to take compensatory time off in lieu of overtime pay for any overtime worked, such compensatory time shall be granted by the employee's administrative superior, on a time and one-half basis, at a time mutually convenient to the employee and the administrative superior. Compensatory time is not available for use until it appears on the employee's earning statement and the compensation described in the earning statement is available to the employee.

An employee may accrue compensatory time to a maximum of two hundred forty hours, except that public safety employees and other employees who meet the criteria established in the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended, may accrue a maximum of four hundred eighty hours of compensatory time. An employee shall be paid at the employee's regular rate of pay for any hours of compensatory time accrued in excess of these maximum amounts if the employee has not used the compensatory time within three hundred sixty-five days after it is granted, if the employee transfers to another agency of the state, or if a change in the employee's status exempts the employee from the payment of overtime compensation. Upon the termination of employment, any employee with accrued but unused compensatory time shall be paid for that time at a rate that is the greater of the employee's final regular rate of pay or the employee's average regular rate of pay during the employee's last three years of employment with the state.

No overtime, as described in this section, can be paid unless it has been authorized by the authorized administrative authority. Employees may be exempted from the payment of compensation as required by this section only under the criteria for exemption from the payment of overtime compensation established in the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended. With the approval of the director of administrative services, the appointing authority may establish a policy to grant compensatory time or to pay compensation to employees in the service of the state who are exempt from overtime compensation. With the approval of the board of county commissioners, a county human

Exhibit 2

Page 2 of 3

services department may establish a policy to grant compensatory time or to pay compensation to employees of the department who are exempt from overtime compensation.

(B)

(1) An employee, whose salary or wage is paid in whole or in part by the state, shall be paid for the holidays declared in section 124.19 of the Revised Code and shall not be required to work on those holidays, unless, in the opinion of the employee's responsible administrative authority, failure to work on those holidays would impair the public service.

(2) An employee paid directly by warrant of the director of budget and management who is scheduled to work on the first day of January, the commemoration of memorial day, the fourth day of July, the fourth Thursday in November, or the twenty-fifth day of December and who does not report to work the day before, the day of, or the day after the holiday due to an illness of the employee or of a member of the employee's immediate family shall not receive holiday pay as provided by this division, unless the employee can provide documentation of extenuating circumstances that prohibited the employee from so reporting to work. If the employee works a shift between the employee's scheduled shift and the holiday, the employee shall be paid for the holiday.

(3) An employee also shall not be paid for a holiday unless the employee was in active pay status on the scheduled work day immediately preceding the holiday, except that an employee need not be in active pay status on that work day in order to be paid for the holiday if the employee is participating in a mandatory or voluntary cost savings day under section 124.392 of the Revised Code.

(4) If any of the holidays declared in section 124.19 of the Revised Code falls on Saturday, the Friday immediately preceding shall be observed as the holiday. If any of the holidays declared in section 124.19 of the Revised Code falls on Sunday, the Monday immediately succeeding shall be observed as the holiday. Employees whose work schedules are based on the requirements of a seven-days-a-week work operation shall observe holidays on the actual days specified in section 124.19 of the Revised Code.

(5) If an employee's work schedule is other than Monday through Friday, the employee shall be entitled to eight hours of holiday pay for holidays observed on the employee's day off regardless of the day of the week on which they are observed.

(6) A full-time permanent employee is entitled to a minimum of eight hours of pay for each holiday regardless of the employee's work shift and work schedule. A flexible-hours employee, who is normally scheduled to work in excess of eight hours on a day on which a holiday falls, either shall be required to work an alternate schedule for that week or shall receive additional holiday pay for the hours the employee is normally scheduled to work. Such an alternate schedule may require a flexible-hours employee to work five shifts consisting of eight hours each during the week including the holiday, and, in that case, the employee shall receive eight hours of holiday pay for the day the holiday is observed.

(7) Except as provided under section 124.392 of the Revised Code, part-time permanent employees shall receive four hours of holiday pay regardless of the employee's work shift and work schedule.

(8) When an employee who is eligible for overtime pay under this section is required by the employee's responsible administrative authority to work on the day observed as a holiday, the employee shall be entitled to pay for such time worked at one and one-half times the employee's regular rate of pay in addition to the employee's regular pay, or to be granted compensatory time off at time and one-half thereafter, at the employee's option. Payment at such rate shall be excluded in the calculation of hours in active pay status.

(C) Each appointing authority may designate the number of employees in an agency who are flexible-hours employees. The appointing authority may establish for each flexible-hours employee a specified minimum number of hours to be worked each day that is consistent with the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended.

(D) This section shall be uniformly administered for employees as defined in section 124.01 of the Revised Code and by the personnel departments of state-supported colleges and universities for employees of state-supported colleges and universities. If employees are not paid directly by warrant of the director of budget and management, the political subdivision shall determine whether the use of sick leave shall be considered to be active pay status for purposes of those employees earning overtime or compensatory time.

(E) Policies relating to the payment of overtime pay or the granting of compensatory time off shall be adopted by the chief administrative officer of the house of representatives for employees of the house of representatives, by the clerk of the senate for employees of the senate, and by the director of the legislative service commission for all other legislative employees.

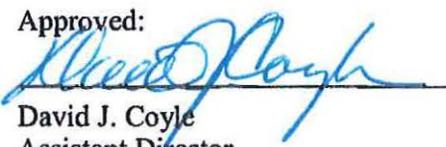
(F) As used in this section, "regular rate of pay" means the base rate of pay an employee receives plus any pay supplements received pursuant to section 124.181 of the Revised Code.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 128th General Assembly ch.10, HB 16, §101, eff. 6/30/2009.

Effective Date: 06-15-2000; 06-30-2006

Approved:


David J. Coyle
Assistant Director

Standard Procedure 220-001 (SP)
Effective: April 23, 2015
Responsible Division: Human Resources
Supersedes Standard Procedure Dated
January 13, 2013

STANDARD PROCEDURE FOR OVERTIME, COMPENSATORY TIME AND FLEX TIME

PURPOSE:

The purpose of this Standard Procedure is to establish a uniform process governing Ohio Department of Transportation employees' accrual and use of overtime, compensatory time and flex time.

AUTHORITY:

Fair Labor Standards Act 29 U.S.C. 201, et seq. Code of Federal Regulations 29 CFR 541

Ohio Revised Code 124.01; 124.18

Ohio Administrative Code 123:1-43-01; 123:1-43-02

DAS Directives Nos. HR-D-08 (Compensatory Time); HR-D-06 (Overtime Compensation)

ODOT Policy 17-004 Policy for Overtime, Compensatory Time and Flex Time

SCOPE:

This Standard Procedure applies to all ODOT employees.

BACKGROUND:

The Ohio Department of Transportation workforce consists of employees having a wide range of job duties and functions. The Department is obligated to establish procedures for consistent application of overtime, compensatory time and flex time to assure that each employee is properly compensated, to assure that the Department properly accounts for all employees' extra work hours and to comply with all applicable State and Federal laws.

DEFINITIONS:

Bargaining Unit Employees

Employees subject to the Collective Bargaining Agreement.

FLSA

Fair Labor Standards Act 29 U.S.C. 201, et seq.

Manager

Any employee responsible for the supervision of other employees.

Overtime Eligible Employees

Employees who are exempt from the Bargaining Unit and are designated by the Deputy Director of Human Resources as overtime eligible.

Overtime Exempt Employees

Employees who are exempt from the Bargaining Unit and have not been designated as overtime eligible.

Standard Work Week

As defined by O.R.C. 124.18(A), the standard work week for all employees whose salary or wage is paid in whole or in part by the state is forty hours in one calendar week.

PROCEDURE:

All employees are expected to keep to a minimum the number of overtime hours worked and to accurately report hours worked. Overtime work should only be utilized/performed with prior managerial approval. Supervisors must ensure that employees do not perform work outside their regularly scheduled hours without prior managerial approval. Employees who perform overtime work without obtaining prior approval may or may not be paid and may be subject to disciplinary action, unless emergency or other urgent operational circumstances necessitated the use of the overtime.

All managers are responsible to make certain that all employees under their supervision use overtime, compensatory time and flex time appropriately and in accordance with this standard procedure. In addition, they are responsible to ensure that the position description for each employee is an accurate and current reflection of the employee's job duties so that an employee's overtime designation can be properly determined.

The Deputy Director of Human Resources is responsible to maintain a list identifying each employee's eligibility for overtime and compensatory time. This list shall be reviewed periodically. When changes occur, all affected employees will be notified. The list must designate each employee as bargaining unit, overtime eligible, or overtime exempt.

Standard Procedure No. 220-001(SP)

Effective Date: April 23, 2015

Page 3 of 6

The Deputy Director of Human Resources is responsible to ensure that each employee's rate for accrual, use and payment for or conversion of overtime and compensatory time complies with this standard procedure.

I. Overtime

Bargaining Unit Employees:

The accrual and use of overtime for bargaining unit employees is governed by the Collective Bargaining Agreement.

Employees Exempt from the Bargaining Unit:

Overtime Eligible Employees:

An employee designated as an overtime eligible employee is entitled to compensation for such time over 40 hours per week at one and one-half times the employee's total rate of pay. In lieu of overtime, an employee may elect to earn compensatory time on a time and one half basis for every hour worked in excess of 40 hours per week, as specified in Section II, below.

Overtime Exempt Employees:

An employee who has not been designated as an overtime eligible employee by the Deputy Director of Human Resources is not permitted to earn overtime.

In limited circumstances, employees determined to be overtime exempt may be compensated at the overtime eligible rate of one and one-half times the total rate for hours worked in excess of the scheduled 40 hour work week when performing core functions assigned to an overtime eligible classification. These circumstances include work performed as part of a snow and ice operation and other extreme operational situations as determined by the Director. In accordance with R.C. 124.18, the Director will prepare a written request identifying the operational need or exceptional circumstance and identify those overtime exempt employees to be paid overtime for approval by the Director of Administrative Services.

II. Compensatory Time

Bargaining Unit Employees:

The accrual and use of compensatory time for bargaining unit employees is governed by the Collective Bargaining Agreement.

Employees Exempt from the Bargaining Unit:

Overtime Eligible Employees:

An overtime eligible employee may, at their discretion, elect to be paid for overtime, or bank the overtime as compensatory time, on a time and one-half basis.

- A) The maximum number of hours that may be accrued by these employees is 240 hours. Unused compensatory time will be paid after 365 days from the date it was earned.

Overtime Exempt Employees:

- A) Overtime exempt employees may accrue compensatory time for time exceeding 80 hours in a pay period on an hour for hour basis. This includes leave, holidays, etc.
- 1) The maximum amount of hours that can be accrued is 120 hours and must be used within 180 days of accrual.
 - 2) Unused compensatory time will be lost. There will be no cash payment for compensatory time or conversion to other types of leave. Compensatory time cannot be used to extend the date of retirement or resignation. No compensatory time accrued in another state department or agency will be transferable.

III. Flex Time

Flex time typically occurs when an employee works more hours in a day or week than normal and wishes to account for that by taking an equal amount of time off. In all cases, the employee should have the approval of his/her manager prior to using flex time and should accurately reflect this time on his/her timesheets and other work records.

- A) Overtime eligible (bargaining unit and exempt) employees must flex their time within a single work week.
- B) Overtime exempt employees may flex their time within a pay period.

Districts or divisions may implement more specific protocols for requesting and using flex time, (forms to use, etc.)

IV. Change In Overtime Status As A Result Of Change In Position

- A) When an employee moves from a position that is overtime eligible into a permanent position that is overtime exempt, the employee must be paid out the full balance of all unused compensatory time at the employee's total rate of pay in the overtime eligible position.
- B) When an overtime exempt employee moves into a permanent position that is overtime eligible, the employee must forfeit any accrued compensatory time.
- C) When an overtime exempt employee moves into any other permanent position that is also overtime exempt the employee retains any accrued compensatory time.
- D) When an employee moves from a bargaining unit position into an exempt overtime

Standard Procedure No. 220-001(SP)

Effective Date: April 23, 2015

Page 5 of 6

eligible (non-bargaining unit) permanent position, the employee shall be paid out the full balance of the unused compensatory time at the employee's bargaining unit total rate of pay.

V. Reporting of Overtime and Compensatory Time

The Division of Human Resources will provide a monthly report of overtime costs to each District Deputy Director or Central Office Deputy Director over a Division. The Central Office report shall include employees who have earned over \$5,000 in paid overtime and/or compensatory time banked for the year; the District report shall include employees who have earned over \$10,000 in paid overtime and/or compensatory time banked for the year.

District Deputy Directors and Central Office Deputy Directors over a Division may assign the routine approval of overtime to designated managers; however, paid overtime and compensatory time banked exceeding \$15,000 for any employee in a fiscal year must be justified and approved by the District Deputy Director or Central Office Deputy Director over the Division. (The District Deputy Director or Central Office Deputy Director over the Division may require justification for amounts less than \$15,000). The Deputy Director will determine the frequency of approvals once an employee reaches \$15,000. One-time approval may be permitted if circumstances dictate.

Approvals for overtime and compensatory time banked exceeding \$15,000 for individual employees must be adequately documented by the District Deputy Director or Central Office Deputy Director over the Division, and a copy of the approvals filed in the appropriate payroll office. The approval process and documentation justifying the overtime is a part of Central Office Payroll's Quality Assurance Review (QAR).

TRAINING:

It is anticipated that implementing this Standard Procedure will not require any formal training; however, the policy will be reviewed with the Central Office and District Deputy Directors. The Deputy Director of Human Resources will continue to monitor and assess the need for training and will provide any necessary training to employees responsible for administering this Standard Procedure.

FISCAL IMPACT:

Implementation of the amendment to this procedure will result in a slight increase in costs from previous years.