

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES
FILE ID NO.: 2015-CA00018
DATE OF REPORT: SEPTEMBER 20, 2016

The Office of the Ohio Inspector General ... The State Watchdog

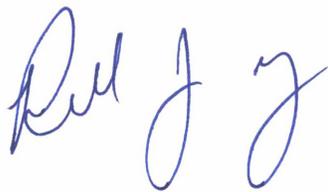
“Safeguarding integrity in state government”

The Ohio Office of the Inspector General is authorized by state law to investigate alleged wrongful acts or omissions committed by state officers or state employees involved in the management and operation of state agencies. We at the Inspector General’s Office recognize that the majority of state employees and public officials are hardworking, honest, and trustworthy individuals. However, we also believe that the responsibilities of this Office are critical in ensuring that state government and those doing or seeking to do business with the State of Ohio act with the highest of standards. It is the commitment of the Inspector General’s Office to fulfill its mission of safeguarding integrity in state government. We strive to restore trust in government by conducting impartial investigations in matters referred for investigation and offering objective conclusions based upon those investigations.

Statutory authority for conducting such investigations is defined in *Ohio Revised Code §121.41* through *121.50*. A *Report of Investigation* is issued based on the findings of the Office, and copies are delivered to the Governor of Ohio and the director of the agency subject to the investigation. At the discretion of the Inspector General, copies of the report may also be forwarded to law enforcement agencies or other state agencies responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies. The *Report of Investigation* by the Ohio Inspector General is a public record under *Ohio Revised Code §149.43* and related sections of *Chapter 149*. It is available to the public for a fee that does not exceed the cost of reproducing and delivering the report.

The Office of the Inspector General does not serve as an advocate for either the complainant or the agency involved in a particular case. The role of the Office is to ensure that the process of investigating state agencies is conducted completely, fairly, and impartially. The Inspector General’s Office may or may not find wrongdoing associated with a particular investigation. However, the Office always reserves the right to make administrative recommendations for improving the operation of state government or referring a matter to the appropriate agency for review.

The Inspector General’s Office remains dedicated to the principle that no public servant, regardless of rank or position, is above the law, and the strength of our government is built on the solid character of the individuals who hold the public trust.



Randall J. Meyer
Ohio Inspector General



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER: 2015-CA00018

SUBJECT NAME: Various

POSITION: State Agencies

AGENCY: Ohio Department of Administrative Services

BASIS FOR INVESTIGATION: Inspector General Initiative

ALLEGATIONS: Failure to Comply with State Law and/or Regulations

INITIATED: April 21, 2015

DATE OF REPORT: September 20, 2016

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On April 17, 2015, the Office of the Ohio Inspector General received a referral from the Ohio Department of Transportation regarding the possibility that employees who are exempt from receiving overtime pay may have been improperly paid overtime compensation in violation of Ohio Revised Code §124.18(A).¹ Upon reviewing the complaint, an investigation was opened on April 20, 2015. A second investigation was opened on April 21, 2015, to determine if other agencies might also be in violation of the same statute.

BACKGROUND

Ohio Revised Code §124.18(A), *Standard work week – compensatory time – overtime pay – holidays*, states in part:

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.

To comply with this provision of the Ohio Revised Code, the Ohio Department of Administrative Services (ODAS) issued a memo, entitled *Overtime Compensation to Overtime Exempt Employees*, on January 15, 2010, to all agencies, institutions, boards, and commissions. This memo outlined the process agencies are to take if they elect to pay overtime exempt employees overtime pay. As stated in the Revised Code, agencies must first seek approval from ODAS before granting overtime pay to overtime exempt employees. Before granting approval, ODAS requires the agency director to submit a proposed policy and a letter requesting approval of its policy. At a minimum, the policy must contain:

- The positions or classifications of exempt employees eligible to receive payment for overtime and the duties performed by those exempt employees;

¹ See report of investigation 2015-CA00017.

- 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; and
- Justification of the need for the payment of overtime, including an analysis of the reason alternative means are not appropriate. ([Exhibit 1](#))

Any changes or updates to the policy, including individuals, positions, or classifications the agency has determined should be allowed overtime pay, are to be submitted to ODAS for approval before the compensation is granted.

INVESTIGATIVE SUMMARY

On July 10, 2015, the Office of the Ohio Inspector General requested from the Ohio Department of Administrative Services copies of all submitted and approved policies to ODAS from any agencies regarding the payment of overtime to overtime exempt employees, pursuant to Ohio Revised Code §124.18(A) and the ODAS memorandum dated January 15, 2010, and a list of all overtime exempt employees who were paid overtime from July 1, 2010, to July 10, 2015. On October 15, 2015, ODAS provided the requested information to investigators.

An initial review of the list determined 1,319 individuals classified as overtime exempt at 23 separate state agencies received overtime pay. Of these 23 agencies, five were not in the jurisdiction of the Office of the Ohio Inspector General. In four agencies, a number of employees were initially paid for overtime compensation but the amount of pay each employee received was corrected, or reversed, in subsequent pay periods.²

Of the remaining 14 agencies, it was determined that 12 agencies had paid overtime exempt employees outside of their approved ODAS overtime policies. The Ohio Department of Transportation overtime payment issue is discussed in-depth in the Office of the Ohio Inspector

² A pay period refers to the two-week time period state employees are typically paid. The pay period begins on Sunday and ends on Saturday 14 days later.

General's Report of Investigation 2015-CA00017. Two agencies, the Ohio Department of Public Safety and the Ohio Department of Rehabilitation and Correction, had not paid any overtime outside of their ODAS-approved policies, and thus had no issues.

The remaining 11 agencies were contacted and the specific overtime payments were questioned. Nine of the 11 agencies were able to provide evidence that the overtime payments were made correctly, even without an ODAS overtime policy, due to employees being misclassified as overtime exempt in the OAKS payment system, or employees receiving a promotion to an overtime exempt position receiving overtime payment from before their promotion effective date. In instances where an employee was misclassified in the system, the agencies have corrected those misclassifications.

Ohio Department of Commerce

On July 2, 2011, the Ohio Department of Commerce (ODC) paid 4.8 hours of overtime pay to an employee who is overtime exempt. Responding to a request made by the Office of the Ohio Inspector General, ODC was unable to provide an approved plan allowing the overtime payment. Further, ODC was unable to locate an overtime approval letter in the department's human resources offices. ODC was unable to provide an explanation as to why an overtime exempt employee was paid overtime.

Ohio Department of Youth Services

ODAS provided the Office of the Ohio Inspector General with three plans the agency had approved for the Ohio Department of Youth Services (ODYS) to allow overtime exempt employees to receive overtime pay. These plans were for specific time periods and for specific institutions. The first plan was for overtime compensation to be paid from July 23, 2014, to October 31, 2014; the second for February 3, 2015, to August 31, 2015; and the third for July 20, 2015, to October 31, 2015. ODYS then provided four additional plans, approved by ODAS, covering the time periods of May 25, 2011, to August 31, 2011; November 21, 2011, to January 31, 2012; April 20, 2012, to July 31, 2012; and December 31, 2015, to February 27, 2016.

The data provided by ODAS listing all ODYS employees who had received overtime pay was compared to the information provided by ODYS in its seven submitted overtime plans. Thirty overtime exempt employees were identified as improperly paid overtime from 2010 to July 2014 and in-between the dates of all seven approved plans. The 30 employees were compensated for 1,281.29 hours of overtime without documented approval, totaling \$54,189.40 of overtime pay.

CONCLUSION

In 2010, the Ohio Department of Administrative Services issued a memo to all state agencies, institutions, boards, and commissions regarding the process they are to follow to pay overtime exempt employees overtime compensation in accordance with Ohio Revised Code §124.18(A). The Office of the Ohio Inspector General requested copies of the approved plans from ODAS and a list of all overtime exempt employees who received overtime pay from July 2010 to July 2015. A review of the information found 23 state agencies as having paid overtime exempt employees overtime pay.

Twenty state agencies were found to either be in compliance with state and agency policies, or to be outside the jurisdiction of the Office of the Ohio Inspector General.

- Five agencies were determined to be outside the jurisdiction of the Office of the Ohio Inspector General, and were excluded from analysis;
- Two agencies had approved plans with no overtime payment issues noted;
- Four agencies identified and corrected overtime payment errors prior to the Office of the Ohio Inspector General analysis;
- Nine agencies provided evidence that the overtime payments were appropriate even without approved ODAS plans.

Accordingly, the Office of the Ohio Inspector General finds no reasonable cause to believe a wrongful act or omission occurred in these instances.

Three of the 23 state agencies were unable to provide information showing they had paid overtime in compliance with state or agency policies.

- The Ohio Department of Commerce and the Ohio Department of Youth Services both had approved overtime plans but paid overtime exempt employees overtime pay outside of those plans, and could provide no evidence that the payments were appropriate.
- The Ohio Department of Transportation overtime payment issue is more fully discussed in Office of the Ohio Inspector General's Report of Investigation 2015-CA00017.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in these instances.

RECOMMENDATION(S)

The Office of the Ohio Inspector General recognizes the difficulty in collecting the overtime compensation paid to the employees at the agencies listed in this report due to federal requirements regarding overtime pay and federal, state, and local tax issues. Therefore, no referral will be made to the Ohio Department of Administrative Services regarding seeking recovery of these payments.

The Office of the Ohio Inspector General makes the following recommendations and asks the director of the Ohio Department of Administrative Services to respond within 60 days with a plan detailing how the recommendations will be implemented. The Ohio Department of Administrative Services should:

- 1) Ensure agencies, intuitions, boards, and commissions are aware of the policy requiring ODAS to approve all written plans to extend overtime pay to overtime exempt employees.
- 2) Create restrictions in the state payroll system limiting the use of overtime codes exclusively to those outlined in the approved plans.

REFERRAL(S)

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.



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NAME OF REPORT: Ohio Department of Administrative Services
FILE ID #: 2015-CA00018

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
September 20, 2016

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