



HUMAN RESOURCES

Division: ADMINISTRATION
Chapter: HUMAN
RESOURCES
Policy: HR 3.2 - COMPENSATORY
TIME LEAVE
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PURPOSE

The purpose of this policy is to establish procedures for providing compensatory leave to employees subject to and exempt from the provisions of the Fair Labor Standards Act (FLSA). This policy also includes procedures for accounting for Gap Hours for subject employees.

Policy

It is the policy of the Department of Public Safety to give overtime compensation in the form of compensatory time off, rather than in monetary compensation, whenever possible. Further it is a requirement that all prospective employees, prior to employment, sign an agreement of understanding of this policy as a precondition of employment.

Compensatory Leave is a form of compensation to employees for overtime worked (subject employees), as well as for time worked beyond the standard forty (40) hour work week (exempt employees), whereby time off from the job is granted consistent with the provisions of the Fair Labor Standards Act.

Gap hours are those hours that are caught in the gap between the maximum hours of work required to meet the work schedule standard for the work period and the overtime threshold. Gap hours only apply to employees subject to overtime.

Managers are responsible for controlling the work of employees and the accumulation of compensatory leave, overtime hours and Gap hours and investigating when balances seem excessive in comparison to an employee's duties and responsibilities. Whenever possible, managers should attempt to make adjustments to employees' work schedules to avoid or reduce the amount of gap and overtime being worked.

Employees are responsible for accurately accounting for hours worked and leave taken in accordance with the time administration guidelines and leave policies.

Exempt Employees (Exempt to FLSA Overtime Rules)

Under the State's overtime policy certain employees are designated as Administrative, Executive, or Professional. Employees designated in any one of these categories are exempt from the provisions for overtime compensation. The granting of compensatory time

for employees exempt from the overtime provisions is an agency management decision and shall be applied consistently department wide.

A. Forty (40) Hour Exempt Positions

Employees may earn compensatory time up to an hour for hour for time worked beyond the regular 40 hour work week based on the operational needs of the work unit.

B. 28 Day Exempt Positions

Certain employees/positions follow the 28 day/160 hour work cycle, but are not subject to the FLSA overtime regulations. However, such employees may earn compensatory time up to an hour for hour for time worked beyond the regular 160 hour work cycle based on the operational needs of the work unit.

C. Procedures

1. Compensatory time is not cumulative beyond a twelve (12) month period from the time of occurrence, must be taken as soon as possible, may not be transferred to any other type of leave or to another agency and is lost when an employee is separated from State service or when an employee transfers to a subject position.
2. Hours worked are recorded in SAP/BEACON using the Attendance/Absence code 9500. Before generating compensatory time, the system will use hours worked in excess of the employee's established work schedule to:
 - a) pay back advanced leave liabilities owed to the State,
 - b) pay back adverse weather liabilities owed to the State, and
 - c) offset paid leave hours reported in the same workweek.

D. Compensatory Leave is part of the Approved Leave Hierarchy. When Approved Leave is used, it is recorded in SAP/BEACON using the Attendance/Absence Code 9000. If the employee has compensatory time in his/her quota, it shall be applied by the system prior to vacation leave.

Note: The employee's time must be entered and approved first. Then time evaluation must run to process the entries before the compensatory leave will be reflected in a quota balance.

Subject Employees (Subject to FLSA Overtime Rules)(40 Hours)

A. Those employees subject to the provisions for overtime compensation shall be compensated for hours worked over forty (40) in any given week in the form of

compensatory leave or monetary compensation at the rate of one and one-half hours for every hour of overtime worked.

- B. The compensatory leave is included in the Approved Leave Hierarchy. Before generating compensatory time, the system will use hours worked in excess of the employee's established work schedule to:
 - 1. Pay back advanced leave liabilities owed to the State,
 - 2. Pay back adverse weather liabilities owed to the State, and
 - 3. Offset paid leave hours reported in the same workweek.
- C. When Approved Leave is used, it is recorded in SAP/BEACON using the Attendance/Absence Code 9000. If the employee has compensatory time in his/her quota, it shall be applied by the system prior to vacation leave. The employee shall be monetarily compensated for compensatory time not used within the established period based on the position.
- D. There are three different time frames for when overtime compensation for an employee is processed and it is based on the position classification. The time frames for payout are:
 - a) A. Immediate Payout: No compensatory time is accumulated for time off later. The employee is paid for any overtime hours on the first available pay day following the completion of the work cycle.
 - b) B. Thirty (30) Day Payout: Hours worked beyond the standard for the work week are accumulated in the overtime/compensatory quota in the Approved Leave Hierarchy and are available as time off for up to thirty (30) calendar days. If not used as time off within the thirty (30) day period, the hours are paid on the first available pay day.
 - c) C. 365 Day Payout: Hours worked beyond the standard for the work week are accumulated in the overtime/compensatory quota in the approved leave hierarchy and are available as time off for up to 365 days. If not used as time off within 365 days, the hours are paid on the first available pay day.
- E. The employee's time must be entered and approved first. Then time evaluation must run to process the entries. Depending on the timeliness of these processes, an employee's compensatory time may not be in the quota balance when Approved Leave is applied and as a result, the vacation leave quota may be reduced by the number of hours entered. Additionally, depending on the time frame for which the employee's overtime is paid out, the timeliness of the entries, approvals, time evaluation and payroll, compensatory time may be transferred for payment sooner than the standard

(e.g., 30 or 365 days) following the date of the occurrence and will therefore, no longer be available for use as time off. If there is a delay in time entries that results in the employee being paid for hours that are subsequently used as time off, the system will apply the hours to the absence and then collect the overpayment on the next available payroll.

Regardless of timing, subject employees will be compensated for all overtime hours earned either in time off or pay.

- F. Employees transferring to a position exempt to overtime will be paid for compensatory hours in the next available pay cycle.

Subject Employees Following Alternate Work Schedules (Non-40 Hour Employees)

- A. Subject employees who are by definition engaged in law enforcement activities are covered by what is known as the 7(k) exemption. Employees in this category receive overtime compensation at a rate of one and one-half times the regular hourly rate at which employed for any time worked in excess of 171 hours during a 28 consecutive day work cycle. Refer to Gap Hours for an explanation of the compensation for hours greater than 160, but less than 171.

Classifications covered by the 7(k) exemption:

1. Correctional Officer
2. Lead Correctional Officer
3. Correctional Sergeant
4. State Highway Patrol Trooper
5. State Highway Patrol Trooper - Senior
6. State Highway Patrol Trooper - Master
7. State Highway Patrol Sergeant
8. State Highway Patrol Pilot I/II
9. Butner Public Safety Officer (2 positions)
10. State Capital Police Public Safety Officer
11. State Capital Police Public Safety Supervisor
12. ALE Law Enforcement Agent
13. ALE Law Enforcement Supervisor
14. ALE Law Enforcement Manager

- B. At the end of the 28 day work cycle, if any paid leave subject to leave offsetting was used, it shall first be offset by any hours worked beyond the 160 standard. If the total hours worked still exceeds 171, the employee shall be compensated either monetarily

or as time off depending on the pay out time frame for the position classification for the hours exceeding 171 at the rate of time and one-half.

C. Firefighters

1. Employees in this category receive overtime compensation at a rate of one and one-half times the regular hourly rate at which employed for any time worked in excess of 212 during a 28 consecutive day work cycle.
2. At the end of the 28 day work cycle, if any paid leave subject to leave offsetting was used, it shall first be offset by any hours worked beyond the 212 standard. Employees in this category are set for immediate payout for overtime compensation.

Gap Hours (Straight Time)

- A. Gap hours only apply to employees subject to the FLSA overtime regulations. Gap hours are those hours that are caught in the gap between the maximum hours of work required to meet the work schedule standard for the work period and the overtime threshold.
- B. Gap hours are subject to leave offsetting and are first applied to advanced leave liabilities and adverse weather leave. The employee shall receive straight time compensation in either cash payout or compensatory leave for the remaining gap hours worked depending on the position classification.
- C. It is the decision of agency management in consideration of budget and organizational needs whether compensation will be made monetarily (cash) or as time off. The decision to pay cash versus compensatory time off is not an employee decision and is applied consistently across the agency. Exceptions are subject to Office of State Personnel approval.
- D. The Department of Public Safety decided to set gap hours for immediate cash payout with exceptions by position classification. Those exceptions will have a gap hours quota bucket.
- E. For positions that have a gap hours quota, gap hours are not merged with any other compensatory time and are included in a gap hours bucket as part of the Approved Leave Hierarchy to be used as time off for up to 365 days at which time they are paid out. The payout period is based on the position classification.
- F. Employees transferring to a position exempt to overtime will be paid for gap hours in the next available pay cycle.
- G. Subject Employees following a Weekly Work Schedule (40 hours)

1. When a permanent employee subject to the FLSA overtime rules, has a regular work schedule of less than forty (40) hours per week, but works more than the hours required to satisfy the work schedule during the week, he/she may generate gap hours for time worked between the required schedule and forty (40) hours.
 2. Gap hours can also occur during a workweek when a permanent subject-FLSA employee uses a holiday, civil leave, or other management approved leave that is not offset by hours worked in the same workweek. For example, if a full-time employee has a holiday on Monday, but also works 40 hours in the same workweek as the holiday there are 8 gap hours.
 3. Gap hours can also occur for employees with a permanent part-time work schedule. For example, if a permanent part-time employee is required to work 20 hours a week, the hours worked between 20 and 40 would be considered gap hours.
- H. Employees following the 28-day Work Schedule/Subject to the 7(k) Law Enforcement FLSA Exemption
1. Permanent employees subject to the FLSA law enforcement rules whose regular work schedule is 28 days, gap hours are those hours that are caught in the gap between 160 hours and 171 hours worked before overtime compensation begins. Gap hours can occur when the employee has a scheduled holiday, civil leave or other management approved leave during the 28 day work cycle such that the employee exceeds the standard.
 2. Employees are compensated for gap hours based on the payout time frame for the position classification.
- I. Firefighters are not subject to Gap hours.

Overtime Pay for Exempt Employees When the Governor Declares an Emergency or a Disaster

In accordance with State Personnel Policy, agencies are authorized to pay overtime:

At time and one-half for FLSA non-exempt employees and

At straight-time rates to FLSA exempt employees when all of the following conditions occur:

- A. There is a gubernatorial declaration of a state of emergency/disaster;
- B. Employees are performing law enforcement activities or response/recovery activities during the emergency/disaster;
- C. There is a requirement by management for employees to work overtime during the emergency/disaster; and

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D. Funds are available.

Note: The agency shall determine if funds are available and obtain prior approval from the Office of State Budget and Management to use such funds to cover the overtime payments. The agency shall distribute any overtime pay consistently with a pre-defined standard that treats all employees equitably.

The absence of any of these conditions will require the agency to follow (1) the Hours of Work and Overtime Policy for FLSA nonexempt employees and (2) the agency's compensatory leave policy for FLSA exempt employees.