

## Overtime Pay Guidance – Effective July 1, 2010

Agencies are not permitted to pay overtime to employees covered by the Virginia Personnel Act without approval from the Department of Human Resource Management (DHRM). However, effective July 1, 2010, DHRM has pre-approved all overtime payments and decisions to pay overtime are decentralized to agencies. These guidelines describe when overtime payments may be appropriate. Human resource consultants at DHRM are available to assist agencies in developing agency overtime policies. Agencies should review their policies periodically. DHRM will monitor overtime payments to ensure that agency practices are consistent with these guidelines.

### BACKGROUND

When the Commonwealth became covered by the Fair Labor Standards Act (FLSA) in 1986, agencies were required to pay 1 ½ time overtime pay (or leave) to covered, non-exempt employees. Therefore, DHRM decentralized to agencies 1 ½ time pay approval for many job classes (now Roles) that were likely to include non-exempt employees. The Overtime Eligibility Code in PMIS was used to designate classes as approved for time and one-half, with a value of “Y,” or not approved, “N.” In 1994, DHRM expanded decentralized authority by adding a new value, “C,” meaning that agencies could pay straight-time overtime to lower-level, FLSA exempt managers and professionals.

Effective October 1, 2009, eleven high-population Roles were added to the list of those pre-approved for time-and-one-half overtime pay. Examples include Registered Nurse I and Law Enforcement Officer III. This eliminated the need for P-14 approval for approximately 5,330 employees. Most of these employees were non-exempt or had been approved for time and one-half overtime pay due to labor market conditions. This change reduced the need for manual payroll intervention using the PMIS/CIPPS interface in cases where the payment requested was not consistent with the authorization provided by the Overtime Eligibility Code.

### GENERAL

Agency management should limit overtime assignments to situations where they are unavoidable. Practices such as schedule-adjusting, hiring wage employees for peak workloads, and eliminating non-core responsibilities will help in this regard. Avoiding overtime assignments helps to conserve limited financial resources, avoid employee burn-out, and ensure that services are provided effectively. Agencies should exercise care to manage workers, upon whom their success also depends, with realistic goals and reasonable expectations based on business necessities.

### FLSA NON-EXEMPT EMPLOYEES

Agencies must continue to determine and document FLSA exemption status on a position-by-position basis. FLSA non-exempt employees must be compensated at the rate of 1 ½ times their regular rates for hours actually worked over 40 in a workweek. (Special rules may apply to partially exempt law enforcement personnel.)

- Non-exempt employees should be granted compensatory leave or straight-time pay for extra hours that they are required to work but that do not exceed 40 in the workweek due to leave or a holiday. (See Policy 3.10, Compensatory Leave)
- Non-exempt employees may be paid 1 ½ time overtime for extra hours that do not exceed 40 in the workweek only: 1) when necessary to ensure that critical assignments can be performed in emergency situations, or 2) to hourly employees who are required to work on major holidays.

- Agencies may provide 1 ½ hours of overtime leave for each overtime hour worked to non-exempt employees if they communicate their intentions to do so to all affected employees before the overtime hours are worked. (See Policy 3.15, Overtime Leave)
  - Employees with balances of 240 hours must be paid for any additional overtime hours worked. Agencies should manage the financial liability associated with overtime leave.
- Wage employees are non-exempt unless employed as a physician, lawyer, teacher, or as a computer professional who is paid \$27.63 or more per hour.
- A non-exempt employee may be paid straight-time overtime for occasional or sporadic work that the employee volunteers to perform and that is in a different occupation from the employee's normal job.

### EXEMPT EMPLOYEES

FLSA exempt employees often determine their need to work extra hours to accomplish their assigned responsibilities. When they do, agencies are under no obligation to compensate them for the overtime work, either under the FLSA or under DHRM policies.

- An exempt employee will earn compensatory leave when required by the agency head or his/her designee to work on a holiday or, if he or she is designated as an essential employee, on an official office closing day. (See Policy 3.10, Compensatory Leave)
- At the discretion of agency management, an exempt employee may be awarded compensatory leave when the employee is required by the agency head or his/her designee to work more extra hours in a workweek than the manager believes are reasonably expected for the accomplishment of the position's duties.
  - Compensatory leave for an exempt employee should be authorized before the work is performed.
- High-level agency managers should not be paid for overtime hours worked and should not be granted compensatory leave routinely.
- Straight-time overtime pay may be granted to FLSA exempt employees with approval of the agency's management. Decisions to provide overtime pay to exempt employees should be guided by business and labor market necessity.
- Time and one-half overtime should be paid to exempt employees only:
  - when necessary to ensure that critical assignments can be performed in emergency situations, or
  - to employees in critical positions with difficult labor market conditions and for whom such payments are typical among other employers (e.g., Registered Nurses).
- Exempt employees may not be granted overtime leave.