

# DAS Directive

Directive No. **HR-D-06**  
Effective Date: **03-22-2010**



To: All Appointing Authorities and Personnel Officers  
From: Hugh Quill, *Director of Administrative Services*  
Re: Overtime Compensation

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## PURPOSE

To require all agencies to adopt a uniform overtime compensation policy that complies with the Fair Labor Standards Act ("FLSA"), section 124.18 of the Ohio Revised Code, and Chapter 123:1-43 of the Ohio Administrative Code.

## GENERAL

This directive applies only to employees who are exempt from collective bargaining. It is applicable to employees that are overtime eligible pursuant to section 124.18 of the Revised Code and the Fair Labor Standards Act, or who are overtime exempt pursuant to the FLSA but whose appointing authority has requested and received approval from the Department of Administrative Services to pay overtime compensation in accordance with section 124.18(A) of the Revised Code. Overtime compensation can be earned by employees only for work hours which are immediately necessary to the operation of their office. No overtime will be authorized for office work or other work which could have been completed during a standard 40 hour week.

The following provisions apply to the accrual and use of overtime compensation:

## FLSA OVERTIME ELIGIBLE EMPLOYEES

### Eligibility and Accrual

1. An overtime eligible employee who is required by an administrative supervisor to be in an active pay status for more than 40 hours in any calendar week shall be entitled to overtime compensation or compensatory time. Active pay status does not include sick leave.
2. An employee entitled to overtime compensation shall be entitled to compensation for such time over 40 hours at one and one-half times his or her base rate of pay.
3. An overtime eligible, flexible hour employee is not entitled to compensation for overtime work unless his or her administrative supervisor requires him or her to be in an active pay status for more than 40 hours in a calendar week, regardless of the number of hours worked on any day in the same calendar week.

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## Approval Access

1. An employee who is required to work more than 40 hours in any calendar week must have the overtime work approved in advance by his or her administrative supervisor. An overtime eligible employee shall be required to document all hours worked, including overtime worked, on the employee time sheet. The administrative supervisor shall be responsible for monitoring overtime work, and for assuring that all overtime worked is documented on the employee time sheet and that the employee obtained prior approval to work the overtime.
2. No overtime eligible employee shall begin work prior to his or her scheduled work hours or continue to work after his or her scheduled work hours or during a scheduled lunch period, without prior approval of the administrative supervisor.
3. In an emergency situation, when no administrative supervisor or other individual is available to authorize the overtime work, and after exhausting all means of contacting the administrative supervisors, the employee may work the overtime he or she deems necessary.
4. Employees who work overtime without approval (where prior approval is possible) shall be compensated for the time worked but shall be subject to disciplinary action for failure to follow the approval process outlined in this directive. Employees who deem it necessary to work overtime when prior approval is not possible are subject to disciplinary action for abuse of discretion if it is determined that the situation was not an emergency or the employee exercised poor judgment.

## Compensatory Time

1. An overtime eligible employee may elect to accrue compensatory time in lieu of overtime pay for such time over 40 hours on a time and one-half basis.
2. An overtime eligible employee may accrue compensatory time to a maximum of 240 hours, except that the Department of Public Safety employees and other employees who meet criteria established under the Fair Labor Standards Act may accrue up to 480 hours of compensatory time. Any hours of compensatory time accrued in excess of these maximum amounts shall be paid to the employee as overtime compensation if the employee has not used the compensatory time within 365 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.
3. Compensatory time use must be documented on a leave form signed by the employee and the employee's administrative supervisor prior to leave being taken,

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or by using an acceptable alternative method based upon agency policy. The employee may use the compensatory time at a time mutually convenient to the employee and the employee's administrative supervisor.

4. Compensatory time balances will be maintained in OAKS. A report of compensatory time balances may be maintained and reported on the employee's paycheck stubs (in paper or electronic format).
5. Upon termination of employment, any overtime eligible employee with accrued, but unused compensatory time shall be paid for that time at the 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 last three years of employment with the state.

## FLSA OVERTIME EXEMPT EMPLOYEES

### Ensuring Appropriate FLSA Designations

Agencies must ensure that they have properly designated positions as overtime exempt per the criteria established by the FLSA. Agencies may need to consult with human resources staff, legal counsel, and/or DAS/HRD with respect to assigning appropriate designations at the position level.

However, the following guidelines may be helpful in reviewing whether an FLSA overtime exempt designation is appropriate:

1. Collective-bargaining exempt positions that are executive, administrative, professional or highly compensated under the FLSA should generally be designated as overtime exempt.
  - a. Executive Exemption: This exemption is applicable to employees who are paid a salary of at least \$455 per week or \$23,660 per year and: (1) whose primary duty is management of the enterprise or a customarily recognized department or subdivision of the enterprise; (2) who customarily and regularly direct the work of two or more full-time employees or their equivalent; and (3) who have the authority to hire and fire, or have particular weight given to his or her suggestion on hiring, firing, advancement, promotion, or other changes to the status of other employees.
  - b. Administrative Exemption: This exemption is applicable to employees who are paid a salary of at least \$455 per week or \$23,660 per year and: (1) whose primary duty is the performance of office or non-manual work directly related to management or general business operations of the employer of the employer's clients; and (2) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

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- c. Professional Exemption: There are numerous types of professional exemptions. The most relevant ones are learned professionals, creative professionals, and computer employees. For each category, the employee must be paid a salary of at least \$455 per week or \$23,660 per year.
  - d. Highly Compensated Exemption: This exemption is applicable to employees who earn an annual compensation of \$100,000 or more, which includes at least \$455 per week paid on a salary basis and (1) whose primary duty is the performance of office or non-manual work; and (2) customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.
2. The actual duties of the position must be thoroughly examined before reaching a conclusion that a position is overtime exempt. Job titles are not sufficient to determine whether a position is overtime exempt under the FLSA. A simple, cursory review of a position description or job classification alone is insufficient and does not comply with the provisions of this directive. Position descriptions should be updated accordingly indicating FLSA exemption if applicable.
  3. Although state pay schedules include hourly rates, state employees are assumed to be treated as salaried employees for the purpose of this analysis.

## Tracking Overtime Exempt Designations

1. Agencies shall ensure that each position within the agency has been reviewed and that the duties of the position meet the FLSA overtime-exemption criteria.
2. Agencies must also ensure the appropriate overtime designation has been made in OAKS.
3. As agencies update existing position descriptions or create new position descriptions, agencies must also review the current FLSA designation and indicate the appropriate designation on the position description.
4. Agencies are encouraged to establish a regular audit timetable on employee designations to ensure that employees continue to perform duties consistent with their position description and classification.

## Requesting Overtime Payment to FLSA Overtime Exempt Personnel

1. If an agency desires to grant overtime compensation to state employees exempt under the FLSA, the agency must request DAS approval in accordance with section 124.18 of the Revised Code. Specifically, the agency must submit to DAS a request

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for approval prior to allowing FLSA overtime exempt personnel to receive payment for overtime. The request must contain:

- a. The classifications of exempt employees, by employee identification number, eligible to receive payment for overtime and the duties performed by those exempt employees;
  - b. The criteria the agency will use to select individual employees, positions, or classifications eligible to receive payment for overtime;
  - c. Specific hours, days per week, times of the year, or isolated situations that employees, positions, or classifications of exempt employees eligible to receive payment for overtime could receive overtime;
  - d. Justification of the need for the payment of overtime, including an analysis of the reason that alternative means are not appropriate. The request submitted for approval must evidence either:
    - i. The employees perform functions essential to maintain the safety, security, and health of Ohio's citizens, or
    - ii. The employees work in a 24-hour operation and the affected employees must work overtime because of direct care, safety, or security reasons. Issues such as salary compression or recruitment and retention are insufficient to justify the request.
  - e. A statement certifying that the payment of overtime to FLSA overtime exempt employees is affordable within an agency's existing payroll appropriations.
2. Agencies that receive approval to pay overtime exempt employees overtime compensation shall track this specific overtime cost using the appropriate code provided by DAS.

## ENFORCEMENT

Agencies shall adopt the provisions of this directive and shall adopt overtime policies consistent with the guidance in this directive. Agencies desiring to submit overtime policies to DAS/HRD for comment and review prior to adoption may submit them to:

Office of Policy Development  
DAS/Human Resources Division  
30 E. Broad Street, 27th Floor  
Columbus, OH 43215

Agencies requesting DAS approval to grant overtime compensation to state employees designated as overtime exempt under the FLSA must submit those requests to the same address.

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All agencies are responsible for implementation and enforcement of this directive, and are responsible for compliance with the Fair Labor Standards Act, Ohio Revised Code, Ohio Administrative Code and any applicable collective bargaining agreements. This directive has been issued by the Department of Administrative Services, pursuant to section 124.18 of the Revised Code and shall be adopted by all agencies. This directive is approved for employees exempt from collective bargaining. Various provisions may differ for bargaining unit employees and the applicable contract should be consulted.

This directive supersedes any previously issued directive or policy on this issue and will remain effective until canceled or superseded.

## AUTHORITY & REFERENCE

ORC 124.18  
OAC 123:1-45-01  
OAC 123:1-43-01 through -02  
Fair Labor Standards Act