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OhioDAS

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

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 polices 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