OhioDAS

# OVERTIME COMPENSATION

| POLICY NUMBER: 200-07 | EFFECTIVE DATE: 1/04/2013 | APPOINTING AUTHORITY APPROVAL: |
|---|---|---|
| REPLACES POLICY DATED: 11/05/2010 | AUTHORITY: ORC 124.18; OAC 123:1-45-01; OAC 123:1-43-01 and 02; Fair Labor Standards Act; DAS Directive No. HR-D-06 | |

## I. PURPOSE

This policy establishes the eligibility, approval and criteria for overtime compensation, in accordance with the Fair Labor Standards Act (FLSA), section 124.18 of the Ohio Revised Code (ORC) and Chapter 123:1-43 of the Ohio Administrative Code (OAC), as it applies to Department of Administrative Services (DAS) employees who are exempt from collective bargaining (hereinafter "exempt employees").

## II. GENERAL

A. This policy applies to DAS exempt employees only.

B. Employees must be overtime eligible pursuant to ORC 124.18 and the FLSA, or overtime exempt pursuant to the FLSA and approved for overtime compensation in accordance with ORC 124.18(A).

C. Overtime compensation can be earned only for work hours which are immediately necessary to the operation of the office.

D. No overtime will be authorized for office work or other work which could have been completed during a standard 40 hour week.

## III. FLSA OVERTIME ELIGIBLE EMPLOYEES

### A. ELIGIBILITY

1. An FLSA overtime eligible employee (hereinafter "eligible employee") who is required by a supervisor to be in an active pay status (not including sick leave) for more than 40 hours in any calendar week shall be entitled to overtime compensation or compensatory time.

2. Such employee will be entitled to overtime compensation for such time over 40 hours at one and one-half times his or her base rate of pay.

3. An employee who flexes time during any one calendar week is not entitled to overtime compensation, regardless of the number of hours worked on any one

day, unless he or she is required to be in an active pay status by a supervisor for more than 40 hours total in that same calendar week.

B. APPROVAL of OVERTIME

1. The supervisor must verify that the overtime hours are affordable.

2. An employee working more than 40 hours during a calendar week must have the overtime work approved in advance by their supervisor.

    a. The employee is required to document all hours worked, including overtime hours, on the Employee Work Hours Record.

    b. The supervisor shall be responsible for assuring the employee obtained prior approval to work overtime, that all overtime work is documented on the Employee Work Hours Record and for monitoring the overtime work.

3. No eligible employee shall begin work prior to or continue to work after his or her scheduled work hours or during a scheduled lunch period without prior approval of the supervisor.

4. In an emergency situation, when there is no supervisor, manager or administrator available to authorize overtime work, and after exhausting all other means of contacting a supervisor, the employee may work the overtime he or she deems necessary.

5. An employee who works overtime without approval, shall be compensated for the time worked.

    a. When obtaining prior approval was possible, the employee will be subject to disciplinary action for not following the established approval process.

    b. When prior approval was not possible and if it is determined that the situation was not an emergency or the employee exercised poor judgment, the employee will be subject to disciplinary action for abuse of discretion.

C. COMPENSATORY TIME

1. An 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 eligible employee may accrue compensatory time up to a maximum of 240 hours.

3. Compensatory time accrued in excess of the maximum shall be paid as overtime compensation if:

a. The time is not used within 365 days of being granted or

b. The employee transfers to another state agency or

c. A change in status exempts the employee from the payment of overtime compensation.

4. Compensatory time used must be documented on an OAKS Request for Leave form and approved by the employee's supervisor prior to leave being taken.

   a. An acceptable alternative method may be used based on policy, e.g. email communication between employee and supervisor.

   b. Time may be used when mutually convenient to the employee and the employee's supervisor.

5. Compensatory time balances will be maintained in OAKS.

   a. Time balances may be maintained and reported on the employee's paycheck stub (paper or electronic format).

6. Upon termination of employment, an eligible employee will be paid for unused compensatory time accrued.

   a. Employee shall be paid at the rate that is the greater of:

      - Employee's final regular rate of pay, or

      - Employee's average regular rate of pay during the last three years of employment with the state.

## IV. FLSA OVERTIME EXEMPT EMPLOYEES

### A. ENSURING APPROPRIATE FLSA DESIGNATIONS

1. Appropriate employee positions must be properly designated as overtime exempt per criteria established by the FLSA.

2. Guidelines for appropriate FLSA overtime exempt designation:

   a. Executive, administrative, professional or highly compensated collective-bargaining exempt positions under the FLSA should generally be designated as overtime exempt.

      1) Executive Exemption

         - applicable to employees paid a salary of at least $455 per week or $23,660 per year, and

- whose primary duty is management of the enterprise or a customarily recognized department or subdivision of the enterprise, and

- who customarily and regularly directs the work of two or more full-time employees or their equivalent, and

- who have the authority to hire or fire, or have particular weight given to their suggestion on hiring, firing, advancement, promotion, or other changes to the status of other employees.

2) Administrative Exemption

- applicable to employees paid a salary of at least $455 per week or $23,660 per year, and

- whose primary duty is the performance of office or non-manual work directly related to management or general business operations of DAS or DAS' clients, and

- whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

3) Professional Exemption

- There are numerous types of professional exemptions.

- Most relevant are learned professionals, creative professionals, and computer employees.

- Employee must be paid a salary of at least $455 per week or $23,660 per year.

4) Highly Compensated Exemption

- applicable to employees earning an annual compensation of $100,000 or more which includes a salary basis of at least $455 per week, and

- whose primary duty is the performance of office or non-manual work, and

- who customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

b. Determining that a position is overtime exempt.

1) Actual duties of a position must be thoroughly examined.

2) Job titles are not sufficient to make a determination under FLSA.

3) A simple, cursory review of a position description or job classification alone is insufficient and does not comply with provisions of this policy.

4) Position descriptions should be updated accordingly indicating FLSA exemption if applicable.

c. Although state pay schedules include hourly rates, state employees are assumed to be treated as salaried employees for the purpose of this analysis.

B. TRACKING OVERTIME EXEMPT DESIGNATIONS

1. Each position within DAS must be reviewed, including the duties of the position, to determine FLSA overtime-exemption status.

2. The appropriate overtime designation must be made in OAKS.

3. Current FLSA designations must be reviewed when existing position descriptions are updated or when new position descriptions are created and the appropriate FLSA designation should be indicated on the position description.

4. Employee designations will be audited every two years to ensure duties being performed are consistent with the position description and classification.

C. REQUESTING OVERTIME PAYMENT TO FLSA OVERTIME EXEMPT PERSONNEL

1. In order to grant overtime compensation for employees exempt under the FLSA, approval must first be requested in accordance with ORC 124.18.

2. The request must be submitted through the DAS Human Resources Administrator to the DAS, Human Resources Division, Office of Policy Development for approval prior to allowing FLSA overtime exempt personnel to receive payment for overtime.

3. 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 that will be used 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.

1) The request submitted for approval must evidence either:

- The employees perform functions essential to maintain the safety, security, and health of Ohio's citizens, or

- The employees work in a 24-hour operation and the affected employees must work overtime because of direct care, safety, or security reasons.

2) 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 existing payroll appropriations.

4. Specific overtime cost for approved overtime compensation to exempt employees shall be tracked using the appropriate code.

## V. ENFORCEMENT

A. Compliance with the Fair Labor Standards Act, Ohio Revised Code, Ohio Administrative Code and any applicable collective bargaining agreements shall be maintained.

## VI. REVISION HISTORY

| Date | Description of Change |
|---|---|
| 11/05/2010 | Original Policy Issued |
| 1/04/2013 | New appointing authority |
| | |