

**STATE OF LOUISIANA
DEPARTMENT OF CIVIL SERVICE
BATON ROUGE, LA.**

HR Handbook Update No. 2005 - 0001

To: HEADS OF STATE AGENCIES AND PERSONNEL OFFICERS

Subject: Overtime

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The Overtime Section of the on-line HR Handbook is being updated to include the following information in the discussion of overtime rule 21.11.

IMPORTANT NOTE: For purposes of applying this rule, agencies may use the compensatory leave balance that appears at the end of the pay period, which includes the last day of the calendar year (December 31). This applies to hour-for-hour "state" overtime; we have no authority to affect any requirements for payment of FLSA overtime, which must be dealt with in accordance with the FLSA.

It is come to our attention that many agencies use reports which show end-of-pay-period information, rather than information as of a particular calendar date. It is unreasonably difficult and extremely time-consuming to use the end-of-pay-period information, then "track back" time taken or worked to figure the calendar year end balances of leave. Therefore, for purposes of applying the provisions of Rule 21.11, it will be acceptable for agencies to use the information, which exists as of the end of the pay period, which includes the calendar-year end date (December 31).

IMPORTANT NOTE: Our rules allow a 90-day window for payment of excess compensatory leave. We expect and encourage agencies to use as much of that window as is necessary to ensure that all prior pay-period adjustments have been made, to ensure an accurate end-of-year balance upon which decisions about payment or cancellation of leave will be made.

The above information has been added to our on-line handbook to try to inform HR Offices, employees and any others that our rules provide for a delay in payment or cancellation of excess compensatory leave balances for the purpose of ensuring that time is allowed for prior pay-period adjustments to be made, therefore ensuring that the information upon which an agency bases its payment or cancellation decision is accurate and up to date. We expect and encourage that agencies will use as much of the 90-day window as necessary to ensure their information is accurate; doing so does not violate any rule, and in fact, again, we encourage agencies to take advantage of that window.

OVERTIME

A Rule-by-Rule Discussion

21.1 AN EMPLOYEE MAY BE REQUIRED TO WORK OVERTIME

It is an employee's responsibility to ascertain the normal overtime requirements for the position he/she occupies. If the normal overtime requirements are such that an employee knows he will be unable to comply with an order to work overtime, then the employee may be well advised to find another job that better suits his/her work availability. While agencies are encouraged to consider employee needs when assigning/ordering overtime duty, DSCS recognizes that an agency's primary responsibility is to ensure that its goals and mission are carried out without undue disruption, and the agency has legal authority to order overtime, even when it may be disruptive for the employee. Employees who refuse a direct order to work overtime may be subject to disciplinary action in accordance with agency practice or policy and Chapter 12 of the Civil Service Rules.

It is the employer's responsibility to ensure that the agency carries out its mission and goals without undue disruption. While agencies are encouraged to carefully consider the needs of its employees when assigning or ordering overtime duty, it is understood that it is not always possible to predict when overtime might be needed, and it is legal to order employees to work overtime when there are insufficient resources to rely on volunteers to work required overtime.

21.2 DETERMINATION OF EXEMPT / NON-EXEMPT STATUS OF POSITIONS

Agencies are required to determine the exempt or non-exempt status of their positions in accordance with the Fair Labor Standards Act (FLSA).

It is recommended that agencies keep a listing of job titles that have been determined to be non-exempt in that agency. Agencies are also recommended to be as careful and consistent as possible.

It will not be the practice of the Department of State Civil Service (DSCS) to second-guess the exempt / non-exempt decisions made by agencies.

21.3 AUTHORITY FOR COMPENSATION

All non-exempt employees shall be compensated for overtime in accordance with the FLSA, for those overtime conditions covered in the FLSA. Normally, FLSA overtime does not apply until an employee has actually worked **IN EXCESS** of 40 hours for the workweek. There are different provisions for some specifically defined types of positions that have work that is normally scheduled on a basis other than an 8-hour/day, 40-hour/week workweek. **It is therefore of the utmost importance that agencies become familiar with FLSA provisions for overtime for the positions used by the agency.** An agency that compensates its employees in accordance only with Civil Service rules may not be in compliance with the FLSA.

Authority to compensate employees for State overtime lies within the Civil Service rules only. State overtime is defined under Rule 21.7.

NOTE: The following rules may be easier to understand once an understanding of the Definition of State overtime is reached. The definition of State overtime is contained in Rule 21.7 and its discussion in this handbook.

21.4 METHODS OF COMPENSATION FOR OVERTIME

This rule authorizes agencies to compensate employees for overtime in the form of **cash payment** or **compensatory leave** earned and credited to the employee.

Cash payment shall be used when required by the rules or under the FLSA.

If cash payment is not required by the rules or under FLSA, then an agency may choose to use compensatory leave as compensation for overtime.

- ? **IMPORTANT NOTE:** An agency that chooses to compensate FLSA overtime with compensatory leave in lieu of cash payment must be able to show, for employees hired after April 15, 1986, that the employee has agreed to the compensatory leave form of compensation. This can be done through a collective bargaining agreement, memorandum of understanding, or any other agreement between the agency and representatives of the employee, or it can be done through an agreement arrived at between the agency and the employee before the performance of the work. An easy way to do this is to obtain a signed agreement from the employee at the time the employee is hired and signs his paperwork. A [sample agreement form](#) that can be used is available.

Intermittent employees cannot earn compensatory leave, but shall always be paid by cash payment, in accordance with their exempt or non-exempt status.

21.5 BASIS FOR CALCULATION OF HOURLY RATE OF PAY, when cash payment method of compensation has been chosen

For State overtime earned at the hour-for-hour rate, the employee's hourly rate of pay shall be calculated using the employee's base pay plus base supplement.

For State overtime earned at the time and one-half rate, the agency may choose to calculate the employee's rate of pay using the employee's base pay plus base supplement, OR the agency may choose to use the FLSA calculation for hourly rate of pay, which may include additional elements such as premium pay, shift differential, or other types of pay.

For FLSA OVERTIME, the employee's hourly rate of pay shall be calculated in accordance with the FLSA. The FLSA may require that premium pay, shift differential, and other types of pay, be included when calculating the employee's hourly rate of pay. It is of utmost importance that agencies become familiar with the FLSA hourly rate-of-pay provisions for all positions in the agency.

21.6 COMPENSATORY LEAVE – CREDITING AND USAGE – when compensatory leave method of compensation has been chosen

An employee may use his compensatory leave with the approval of the appointing authority. Like annual leave, compensatory leave may be used for any reason (unlike sick leave, which can be used ONLY for the employee's own illness). Also like annual leave, use of compensatory leave is subject to approval by the appointing authority (or his designee, often the employee's supervisor).

Also, the rules allow an appointing authority to REQUIRE employees to take all or part of the employee's compensatory leave at any time. Many agencies use this rule to require employees to use their accrued compensatory leave before annual leave is used. Some payroll systems have been programmed to take compensatory leave before annual leave at any time the employee has requested personal leave. This is a legal practice.

Subsection (c) of this rule clarifies that compensatory leave may be paid in cash at any time.

There is no prohibition against an employee using compensatory leave to cover absences that qualify as FMLA absences. However, the employer cannot FORCE an employee to use compensatory time for FMLA purposes. Furthermore, if an employee is granted the use of compensatory leave earned under the provisions of the FLSA (that is, compensatory time earned at the time and one-half rate), that period of absence cannot be counted against the employee's FMLA entitlement. Any FMLA absence that is compensated because an employee uses his state compensatory time (earned at hour-for-hour rate) may, however, be counted against the employee's FMLA entitlement. For a full discussion and understanding of compensatory leave vs. FMLA, please see the discussion contained in the newsletter issued by the DSCS General Counsel in April 2001, at www.dscs.state.la.us/legal/april2001.htm.

21.7 DEFINITION OF STATE OVERTIME

FLSA overtime is overtime calculated for NON-EXEMPT employees who have worked in excess of the FLSA-defined work-period for their jobs. For most employees, this is 40 hours per week (or a multi-week work schedule where the average hours worked in the work period is 40 per week).

Each agency is responsible for being familiar with the provisions of the FLSA, for determining the exempt / non-exempt status of their employees, and for compensating their non-exempt employees in accordance with the FLSA when FLSA conditions exist.

STATE OVERTIME applies to non-exempt employees who have worked in excess of their regular workday or workweek, BUT only under circumstances when the FLSA does not apply. For instance, FLSA would not apply to a non-exempt employee if leave taken or a holiday observed caused the employee to work fewer than 40 hours in a week, including the overtime the employee worked outside of his regular work schedule. In these cases, State overtime would apply to these non-exempt employees.

STATE OVERTIME also applies to employees who are exempt from the FLSA. Exempt employees are never eligible for FLSA overtime, and so all overtime worked by exempt employees is State overtime.

NOTE: Although Civil Service Rules provide an agency with options to compensate exempt employees for State overtime worked; there is no requirement in these rules to compensate exempt employees for overtime.

In the overtime Rules, there is no attempt to define or describe FLSA conditions, except where we needed to for purposes of clarity or distinction in applying State overtime vs. FLSA overtime.

21.7(a) states: “For purposes of calculating hours worked for State overtime, a day off from work due to paid leave taken or a holiday observed is considered to be a day worked.” This part of the rule allows an employee to earn STATE OVERTIME even when the employee has not worked in excess of 40 hours in a week due to a holiday or leave taken.

21.7(b) This part of the rule describes the point(s) at which State overtime begins to be earned. Remember that State overtime only comes into existence when the work does not qualify as FLSA overtime:

- ? In excess of the employee’s regularly scheduled workday. An employee whose regularly scheduled workday is 8 hours earns State overtime as soon as he has worked in excess of 8 hours. A non-exempt employee will earn FLSA overtime if this work, at the end of the week, has caused him to work in excess of his normal work period (40 hours in a week for most employees). For exempt employees, and for non-exempt employees who took leave during the week or observed a holiday during the week and thus did not work in excess of the regular work period, this time worked in excess of the employee’s regularly scheduled work day will be State overtime.
- ? In excess of the employee’s regularly scheduled work period. Work performed on a day which is the employee’s normal day off is State overtime for exempt employees, and is State overtime for non-exempt employees when the employee does not work in excess of his FLSA overtime period (which is 40 hours per week for most employees).
- ? On a holiday, including designated holidays. Employees are eligible to be compensated for State overtime when the employee works on a regular or designated holiday. A non-exempt employee who works on a holiday **AND also** works in excess of his regularly scheduled work period (40 hours in a week for most employees) will earn FLSA overtime after the 40th hour has been worked. A non-exempt employee who works on a holiday, but does NOT work in excess of his regularly scheduled work period, will earn State overtime only. Exempt employees are eligible **ONLY** for State overtime, and thus if they work on a holiday, they may earn State overtime, regardless of the number of hours worked. Remember that “no overtime compensation” is always an option for exempt employees.

- ? During official closures – an employee required to work during an official closure of his agency on a regular workday, earns State overtime. Again, a non-exempt employee who works in excess of his regularly scheduled work period (40 hours in a week for most employees) will earn FLSA overtime; otherwise, the non-exempt employee will receive State overtime for work during an official closure; and the exempt employee may receive State overtime for work during an official closure.

21.8 COMPENSATION RATE for NON-EXEMPT EMPLOYEES

Non-exempt employees shall always be compensated at the time and one-half rate for FLSA overtime, in accordance with the FLSA.

For STATE overtime, non-exempt employees SHALL be compensated at the hour-for-hour rate; except the employee may be compensated at the time and one-half rate if:

- a) The CS Commission has granted an exception allowing the agency to compensate at the time and one-half rate, OR
- b) The appointing authority may choose to compensate at the time and one-half rate those non-exempt employees who work during an official closure due to an emergency situation when the overtime does not qualify as FLSA overtime, OR
- c) The appointing authority may choose to compensate at the time and one-half rate those non-exempt employees who work on a holiday when the overtime does not qualify as FLSA overtime.

21.9 COMPENSATION RATE for EXEMPT EMPLOYEES

An appointing authority may choose to grant no overtime compensation to exempt employees. An appointing authority may do this for all exempt employees, or the appointing authority may establish a policy granting overtime compensation to certain exempt employees (based, perhaps, on a pay level or type of work), while not granting overtime compensation to others. Keep in mind that there should be a rational business reason for different treatment.

If an appointing authority chooses to grant overtime compensation to exempt employees, the overtime compensation shall always be at the hour-for-hour rate, EXCEPT IF:

- ? The overtime is worked during an official closure due to an emergency situation, the appointing authority may choose to compensate exempt employees at the time and one-half rate, or
- ? The CS Commission has granted an exception allowing exempt employees at one or more agencies, or in certain situations, to be compensated at the time and one-half rate.

21.10 CAPS AND REQUIRED PAYMENT FOR OVERTIME EARNED AT THE TIME AND ONE-HALF RATE

This rule applies when an employee remains employed at the same agency from one calendar year to the next. For treatment of compensatory leave in the event an employee separates from state service during the year, or transfers to a different agency during the year, refer to Rule 21.12.

Again, to properly apply this rule, agencies are responsible for being familiar with the provisions of the FLSA, to ensure that employees accumulate no more compensatory leave, earned at the time and one-half rate, than is allowed under the FLSA.

Once the maximum balance of time and one-half compensatory leave has been earned, additional overtime in excess of the employee's established FLSA work period **MUST** be compensated by cash payment at the time and one-half rate.

Including the above FLSA requirement seems to go against the stated intention of removing FLSA requirements from the overtime rules; however, please note that there are rare occasions when State overtime may be earned at the time and one-half rate, and the State time and one-half compensatory leave is placed into the same "bucket" as the FLSA time and one-half compensatory leave. This rule is necessary to clarify that State overtime earned at the time and one-half rate is to be treated the same as FLSA time and one-half overtime, for purposes of reaching the overtime earning caps and payment.

21.11 CAPS, REQUIRED PAYMENT AND CANCELLATION OF OVERTIME EARNED AT THE HOUR-FOR-HOUR RATE

This rule applies when an employee remains employed at the same agency from one calendar year to the next. For treatment of compensatory leave in the event an employee separates from state service during the year, or transfers to a different agency during the year, refer to rule 21.12.

This rule establishes a cap of 360 hours for "carry-over" of "State" compensatory leave (leave earned at the hour-for-hour rate). An exception which allows up to 540 such hours may be granted by the Commission if the agency requests the exception because it is necessary to maintain essential services required to preserve the life, health or welfare of the public.

Employees may earn more than this during the year; however, no more than 360 hours can carry forward from one calendar year to the next. The cap exists not to "punish" employees who work many hours of overtime, but to encourage agencies to allow their employees to use their accrued compensatory leave if and when possible.

IMPORTANT NOTE: For purposes of applying this rule, agencies may use the compensatory leave balance that appears at the end of the pay period, which includes the last day of the calendar year (December 31). This applies to hour-for-hour "state" overtime; we have no authority to affect any requirements for payment of FLSA overtime, which must be dealt with in accordance with the FLSA.

For NON-EXEMPT employees whose hour-for-hour compensatory leave balance exceeds the carry-over limit, the agency is REQUIRED to pay the employee for all excess hours within 90 days after January 1 of each year, for the hours above the cap.

For EXEMPT employees whose hour-for-hour compensatory leave exceeds the carry-over limit, the agency MAY CHOOSE to pay the employee some or all of the excess, and if payment is made, it must be made within 90 days after January 1 of each year. Any compensatory leave for EXEMPT employees that is in excess of the cap that is not paid, must be cancelled.

IMPORTANT NOTE: Our rules allow a 90-day window for payment of excess compensatory leave. We expect and encourage agencies to use as much of that window as is necessary to ensure that all prior pay-period adjustments have been made, to ensure an accurate end-of-year balance upon which decisions about payment or cancellation of leave will be made.

For all payments, the hourly rate of pay shall be calculated in accordance with Rule 21.5(a).

21.12 PAYMENT OR CANCELLATION OF COMPENSATORY LEAVE UPON SEPARATION OR TRANSFER

This rule has to do with the payment or cancellation of compensatory leave when an employee leaves state service entirely, or the employee transfers from one state agency to another. For treatment of overtime that exceeds FLSA or State “caps”, when the employee remains employed at the same agency from one calendar year to the next, refer to Rules 21.10 and 21.11.

21.12(a) TIME AND ONE-HALF COMPENSATORY LEAVE – When an employee separates from state service or transfers to another agency, all time and one-half compensatory leave shall be paid to the employee, at an hourly rate of pay calculated in accordance with the FLSA.

As with Rule 21.10, including this FLSA requirement in these rules seems to go against the stated intention of removing FLSA from the overtime rules, and having DSCS rules deal with State overtime only. Again, however, please note that there are rare occasions when State overtime is earned at the time and one-half rate, and that State time and one-half compensatory leave is placed into the same “bucket” as the FLSA time and one-half compensatory leave. This rule is necessary to clarify that State overtime earned at the time and one-half rate is to be treated the same as FLSA time and one-half overtime, for purposes of reaching the earning caps and payment requirements. Also, this rule is necessary to authorize payments to exempt employees for their overtime earned at the time and one-half rate.

21.12(b) HOUR-FOR-HOUR COMPENSATORY LEAVE –

Subsections 1. and 2. under 21.12(b) pertain to unused hour-for-hour compensatory leave earned by EXEMPT employees.

- ? Subsection 1. - An agency is authorized to pay an exempt employee for his hour-for-hour compensatory leave, if the agency so chooses. There is no requirement to pay the employee.
- ? Subsection 2 - Requires the cancellation of any unpaid hour-for-hour compensatory leave that was earned by an exempt employee, when the employee separates from state service or transfers to another agency. Unlike sick and annual leave, hour-for-hour compensatory leave does NOT remain “on the books” to be recredited to the employee if he/she is rehired into state service at the original or another agency.
- ? Subsection 3. under 21.12(b) pertains to unused hour-for-hour compensatory leave earned by a NON-EXEMPT employee. At one time, non-exempt employees were treated the same as exempt employees, for purposes of paying or canceling unused hour-for-hour compensatory leave. At the current time, however, non-exempt employees shall be paid for their unused hour-for-hour compensatory leave according to the following scale:
 - ? If the employee separates or transfers after January 1, 2003, the employee shall be paid for all such leave, up to maximum of 360 hours.
 - ? If the employee separates or transfers after January 1, 2004, the employee shall be paid for all such leave, up to a maximum of 450 hours
 - ? If the employee separates or transfers after January 1, 2005, the employee shall be paid for all such hours, with no maximum.

In the years 2003 and 2004, any hour-for-hour compensatory leave that remains in excess of the maximum hours to be paid, shall be cancelled.

21.13 EXCEPTIONS TO OVERTIME RULES

This rule allows the Commission to grant exceptions, upon agency request.

If you have questions regarding this information, please contact the Program Assistance Division, telephone (225) 342-8274.

Sincerely,

s/Anne S. Soileau
Acting Director