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U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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PER-2

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Subject: Compensation for Overtime

Approval:

Jack D. Christensen

Title: Director

1. Purpose. This Directive supplements provisions of the Departmental Manual, Part 370 DM 550,1, concerning overtime and is subject to the general provisions stated therein.

2. Definitions. None

3. Policy/Implementation.

a. Policy. The purpose of overtime is to perform work which cannot be accomplished during the normal tour of duty with available staff.

b. Responsibility. Supervisors and Managers have the responsibility for determining the need for overtime; and when and who will perform the overtime. For Headquarters Bargaining Unit employees, if the Supervisor determines that more than one (1), employee is equally qualified to perform required overtime work (e.g., three (3) employees are assigned to identical positions in the same organization, in positions in the same series and at the same grade level, and overtime work is only available on a particular occasion for one (1) employee), he/she should attempt to distribute overtime as equitably as possible among all such equally qualified employees. Supervisors and Managers are responsible for maintaining a close and continuing review of overtime work for the purpose of restricting premium compensation to the minimum required to carry out the work efficiently and economically. Special care must be taken to assure that employees assigned to overtime work make full contribution during regular working hours. Overtime work will not be performed at an employee's home except under unusual or emergency conditions. Such overtime will be ordered and approved, in writing, by an official at least one level above the official authorized to order and approve ordinary overtime, and in addition, requires the approval of the Deputy Director, Administration and Finance.

c. Authorization for Overtime.

(1) Regularly scheduled overtime not to exceed three (3) months can only be approved by the appropriate Deputy Director, Assistant Director, Field Office Director, or Administrative Service Center Chief. Approval of such overtime must be documented and signed by the appropriate official.

(2) Occasional or irregular overtime may be approved by all supervisors. This authorization may be retained at a higher level of management, as provided in the OSMRE Delegations of Authority (OPM-5). Approval of overtime must be documented and signed by the appropriate official on the Overtime Request and Authorization Form. Overtime must be approved in advance of performance.

d. Procedures

(1) All OSMRE employees who are nonexempt under the provisions of the Fair Labor Standards Act (FLSA) shall be compensated for overtime which has been actually performed. Such compensation will be in the form of additional pay, unless the employee elects to have compensatory time off, subject to FLSA limitations and requirements. Nonexempt employees must be paid overtime pay for compensatory time worked if compensatory time off is not taken within six months.

(2) Overtime pay for employees who are exempt from the FLSA is subject to Title 5, U.S.C. Chapter 51. Those employees who are GS-13 or below shall be paid for overtime officially ordered, approved, and actually performed unless they specifically request that in lieu of paid overtime they be granted compensatory time off from duty.

(3) Those employees who are exempt from FLSA and who are grade GM-13, and GS/GM-14/15 shall be granted compensatory time off in lieu of being paid for overtime, which has been officially ordered and approved and is actually performed.

(4) In all cases compensatory time shall be credited on the basis of one hour for each hour of overtime performed, and shall be charged in increments of 15 minutes. Compensatory time off should normally be taken within two pay periods following that in which overtime work was performed. If this cannot be done without detriment to the work, compensatory time off may be granted within six months of the date overtime work was performed. If employees fail to take it within the prescribed limit, the nonexempt employees will be paid for the unused compensatory time; whereas, the exempt employees shall lose the right to compensatory time off and to overtime pay, unless the failure is due to an exigency of the service beyond control of the employees. In such cases, the circumstances shall be documented and presented to the Deputy Director, Administration and Finance, who shall determine if exemption from the prescribed limitations is warranted and thereby authorize payment of overtime.

(5) All overtime must be officially approved in writing using the attached "Overtime Request and Authorization" form. Except for emergency or uncontrollable circumstances,

approval is required before overtime is actually worked. The approving authority shall be responsible for ensuring that the correct overtime hours are recorded, and shall retain the "Overtime Request and Authorization" form for verification purposes.

(6) When the approving official signs the Time and Attendance Report, and the Overtime Request and Authorization form, a line should be drawn through the blank area where overtime would otherwise be reported, thus preventing an entry being made after the time is certified.

(7) The determination of employee coverage or exemption from provisions of the FLSA is based on definitions provided by the Office of Personnel Management in Federal Personnel Manual Bulletin No. 551-18, dated March 13, 1986. Essentially, these guidelines provide that employees whose positions are primarily concerned with Executive, Administrative, or Professional work are exempt from the Act. Such positions typically involve managerial or supervisory responsibility, formulation or execution of management policies, or any other professional work which is intellectual in nature, requires specialized training, and requires significant exercise of independent judgment. All positions not qualifying for exemption are covered by the Act and are accordingly designated nonexempt.

(8) All questions concerning the payment of overtime or granting of compensatory time shall be governed by provisions of Departmental Manual, Part 370 DM 550,1 (a copy of which is attached).

e. Overtime for Training.

(1) Unless the training course is conducted by a private institution for the benefit of the Government, when a training course is conducted by an institution outside the Government, it is an event which cannot be scheduled or controlled administratively and required travel outside the employee's regular work hours to attend the training course will be considered hours of employment and overtime will be payable. However, when a training course is conducted by an institution for the benefit of the Government, it is to be assumed that the Government can control the scheduling of the course and therefore the event is under administrative control of the Government.

(2) However, attendance at Federal training centers located away from an employee's duty station usually will require the employee to travel outside his normal work hours. Since the agency which is conducting the training course can schedule the hours of training, the training course is an event

which can be scheduled or controlled administratively; and employees who attend the course will not be paid for time in travel status regardless of whether employed by the agency conducting the training course or another agency.

f. Compensation for Travel Outside Duty Hours. To be eligible for overtime for travel outside duty hours, the travel must meet one of the four conditions defined below:

(1) involves the performance of work while traveling, (an example would be an inspector traveling to an emergency project for inspection purposes),

(2) is incident to travel that involves the performance of work while traveling, (an example would be if an employee is on a "deadhead" trip, either traveling to a destination to board a means of transportation upon which he will be performing work while traveling, or, having performed work while traveling, returning to his official duty station),

(3) is carried out under arduous conditions, (this would include travel over unusually adverse terrain, during severe weather conditions, or to remote, barely accessible facilities by foot, horseback, or a truck), or

(4) results from an event which could not be scheduled or controlled administratively. (Examples include natural disaster, emergency, unplanned situations, etc.)

g. Travel which is an Inherent Part of, and Inseparable, from the Work Itself. In those work situations where a determination can be made that the travel represents an additional incidental duty directly connected with the performance of a given job, and is therefore considered to be an assigned duty, the time spent in travel is work time, compensable at regular or overtime rates, as appropriate. (Underscoring supplied). It has been administratively determined that travel is an incidental part of the officially assigned duties of employees in the following situations.

(1) Employees performing mine inspection or audit work. Employees in this group report to a headquarters office or other official duty station at the beginning of the workday or workweek to pickup Government vehicles. They then drive these vehicles, to one or more worksites where they perform mine inspection/audit work. During or at the end of the workday or workweek, they return to their official duty station to turn in Government vehicles. The time spent in traveling from the official duty station to worksite and back, and between worksites, is worktime for pay purposes.

(2) If, after an employee completes his duties at a temporary worksite, he is required to return to his post of duty to perform additional tasks, such as cleaning or recharging equipment that must be ready for his use the next day, or obtaining necessary supplies, his tour of duty for that day does not end until he has performed the required additional tasks. (Underscoring supplied). In such cases the travel time between his temporary post of duty and his regular post of duty constitutes a part of the hours of duty of the employee for that day.

4. Reporting Requirements. OSMRE Overtime Request and Authorization.

5. References. Federal Personnel Manual - OPM, Chapter 550, Department of the Interior, Departmental Manual, Part 370 DM 550,1, FPM Bulletin No. 551-18, and Negotiated Agreement-Headquarters OSMRE and Local 1993, National Federation of Federal Employees.

6. Effect on Other Documents.

a. OSMRE Directives relating to:

(1) Application of Fair Labor Standards Act (FLSA) to Positions in the Office of Surface Mining Reclamation and Enforcement.

(2) First 40 Hour Workweek Schedule.

b. This document supersedes Directive PER-2, dated July 20, 1984, and Change Notice dated October 11, 1984.

7. Effective Date. Upon issuance.

8. Contact. Chief, Branch of Policy and Evaluation, (202) 343-4656.

Attachments

Department of the Interior
DEPARTMENTAL MANUAL

Personnel

Part 370 - DM Addition to FPM

Chapter 550 Pay Administration (General)

370 DM 550. 1.1

Subchapter 1. Premium Pay

.1 Coverage. The regulations pertaining to premium pay shall apply to the following officials and employees:

A. All employees under the General Schedule whose annual rates of pay do not exceed the maximum of GS-15.

B. All employees compensated under salary schedule plans administratively fixed and adopted by the Department.

C. Employees assigned to AID projects at overseas posts of duty, subject to the restrictions imposed by AID regulations.

D. Alien and native employees appointed for full-time employment at foreign posts. Such employees shall be paid overtime, night and holiday compensation to the same extent as is authorized locally by the Department of State for alien and native personnel in its employ in the same area.

.2 Exclusions. The regulations in this subchapter pertaining to premium pay shall not apply to the following officials and employees;

A. Officials of the Department who occupy positions exempt from 5 U.S.C. chapter 51, and whose rate of compensation is fixed by law.

B. Employees of the General Schedule whose annual rates of pay are at the maximum of GS-15 or higher, or employees receiving equivalent rate of pay under other pay systems.

C. "WAE" (When Actually Employed) employees, including experts and consultants, except as otherwise provided in subsequent paragraphs of this subchapter.

D. Officers and members of the United States Park Police.

E. Employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramour requirement. (See Section 23 of the Act of March 28, 1934, as amended, 5 U.S.C. 5544 and as further amended by the Federal Employees' Salary Act of 1966, P.L. 89-504).

F. Officers and members of crews of vessels.

.3 Inclusion of Premium Compensation in Back Pay. An employee suspended under 5 U.S.C. 7332, which provides for summary suspension and removal from the service in the interest of the national security of the United States, is entitled upon reinstatement to compensate in computed at the rate he was receiving on the date of suspension and to any night differential, holiday and overtime pay which he would have earned during the period of suspension (34 Comp. Gen. 382).

.4 Retroactive Salary Increases. Employees subject to 5 U.S.C. chapter 51 who received premium compensation during a period when their base salaries were increased through the retroactive application of provisions of law, are entitled to an adjustment in the amount of premium compensation computed on the higher base rate (31 Comp. Gen. 166).

.5 Payment for Overtime. Overtime work will be compensated only when it has been officially ordered or approved, and performed by a full or part-time employee (Comp. Gen. decision B-159950, dated October 9, 1966).

A. Employees subject to 5 U.S.C. chapter 51, whose rates of compensation are at or below the maximum scheduled rate of basic compensation for grade GS-10, shall be paid for overtime worked, unless the employee specifically requests that in lieu of paid overtime he be granted compensatory time off from duty. The employee's request in this matter shall be voluntary without coercion on the part of the supervisor.

B. Overtime pay properly ordered or approved is payable for work in excess of 40 hours in an administrative workweek or 8 hours in a day, whichever is the greater number of overtime hours (42 Comp. Gen. 329). The payment of overtime for work in excess of 8 hours a day does not apply to employees at any grade level engaged in professional or technical engineering or scientific activities when the first 40 hours of duty in an administrative workweek is their basic workweek.

C. Employees subject to 5 U.S.C. chapter 51, whose salaries are above the maximum scheduled rate GS-10, may be paid for overtime or granted compensatory time at the discretion of the head of the bureau or his designated representative. Such determination should be based on factors relating to the interest of the Government.

D. Work performed on Saturday or Sunday outside the employee's basic workweek shall be compensated for at the applicable overtime rate. When a holiday falls on Saturday or Sunday, and Friday or Monday is observed as the nonwork day in lieu thereof, work performed on Saturday or Sunday shall be compensated for at the regular overtime rate.

E. Part-time and intermittent employees will receive overtime compensation for work performed in excess of 8 hours per day. These employees, however, are not eligible for overtime compensation for work in excess of 40 hours per week. (Comp. Gen. decision B-159950, dated February 15, 1967).

.6 Review of Overtime Work. The head of each bureau shall maintain a close and continuing review of overtime work with a view to restricting premium compensation to the minimum required to carry out the work of the bureau efficiently and economically. Special care shall be taken to see that employees assigned to overtime work make their maximum contribution during regular working hours. Overtime work will not be performed at an employee's home except under unusual or emergency conditions. Such overtime will be ordered or approved, in writing, by an official at least one level above the official authorized to order or approve ordinary overtime.

.7 Compensatory Overtime. In lieu of payment for irregular or occasional overtime, compensatory time off from duty may be granted to those employees subject to 5 U.S.C. chapter 51. An employee who is prohibited by reason of the aggregate compensation limitation from receiving overtime compensation may not elect to receive compensatory time off in lieu of such prohibited overtime compensation (26 Comp. Gen. 750). Compensatory overtime shall be credited on the basis of one hour for each hour of overtime performed (subject to the limitation stated in "A" below) and shall be charged in multiples of one hour. Compensatory time off should normally be taken within the same pay period or the pay period following that in which overtime work was performed. If this cannot be within six months of the time overtime work was performed. If this cannot be done without detriment to the work, compensatory time off may be granted within six months of the time overtime work was performed. If the employee fails to take it within the prescribed limit, he shall lose his rights both to compensatory time off and to overtime pay unless the failure is due to an exigency of the service beyond his control. [In the latter case, payment shall be made for overtime work on the basis of the rate earned at the time overtime was worked.]

A. The number of overtime hours for which an employee is entitled to receive compensation at the overtime rate applicable to his basic salary rate before reaching the prorated aggregate limitation for the pay period in which the overtime services were rendered constitutes the maximum number of hours of compensatory time which may be credited to the employee in a pay period in lieu of overtime compensation (37 Comp. Gen. 362).

.8 Holiday Compensation. Authorized work on a holiday occurring outside the employee's 40-hour workweek is subject to the provisions relative to overtime. An employee is not

eligible for compensatory time in lieu of holiday compensation for work performed on a holiday occurring within his 40-hour workweek. (See FPM 610, Subchapter 2, and FPM Supplement 990-2, Book 610, Subchapter S2)

.9 Night Differential. A night differential shall not be paid for duty performed between the hours of 6 p.m. and 6 a.m. in the case of employees for whom it is impracticable to prescribe regularly scheduled hours of duty although it is possible to establish a basic workweek of 40 hours for overtime purposes (34 Comp. Gen.3).

A. Daylight Saving Time. 5 U.S.C. 5506 provides that extra compensation payable for services rendered between or after certain specified hours of the day or night shall be computed on the basis of either standard or daylight savings time, depending upon whichever time is observed by law, custom, or practice where such services are performed.

B. Jury Service. Employees entitled to night pay differential shall continue to receive such pay for periods they are excused from duty while serving as jurors (29 Comp. Gen. 427).

C. "WAE" Employees. Night differential is payable to a "WAE" employee for duty performed while working intermittently, or consistently on temporary assignment to a regularly scheduled tour of duty between 6 p.m. and 6 a.m., even though the employee himself has no regular tour of duty (33 Comp. Gen. 4). This provision shall not apply (1) where a regularly scheduled tour of duty between 6 p.m. and 6 a.m. has not been established or (2) where the work could be performed during daytime hours but the employee is assigned night hours for his convenience.

.10 Regularly Scheduled Standby Duty Pay. Employees may be paid for standby duty after proper determination by the head of the bureau or his designated representative that all of the requirements of Sections 550.142 and 550.143 of the Commission's regulations have been met.

A. The necessity for standby duty must continue for a substantial period of time, generally at least two months, or if standby duty is of a recurring nature throughout the year due to the requirement of the position, it must cover (on an estimated basis) a total of 6 pay periods during a 1-year period.

B. The head of the bureau or his designated representative shall review determinations granting additional compensation for standby duty at appropriate intervals (generally at the end of six months) and shall take action to discontinue or revise rates of additional compensation where such action is found to be warranted.

.11 Pay for Administratively Uncontrollable Work. Additional compensation may be granted to employees to whom this chapter is applicable who are serving in positions in which the hours of duty cannot be controlled administratively and determination is made by the head of the bureau or his designated representative, that the duties of a position are such that while overtime, night duty, Sunday and holiday duty will be required, it is not possible to schedule such duty in advance, and the employee is the only person who can determine when such duty is required in his position.

A. Reviews of previously approved cases shall be made not less frequently than every 6 months to determine whether the same circumstances exist as were present when the original determination was made. Appropriate action warranted by the facts disclosed in the review shall be taken.

B. Although additional compensation of 15% based on noncontrollable tour of duty is in lieu of any other premium compensation, overtime pay is authorized for regularly scheduled overtime duty. The necessity for paying both additional compensation and regular overtime in any position should be carefully distinguished and documented.

(1) An employee who is granted additional compensation of 15% because of an uncontrollable tour of duty Mondays through Fridays is not entitled to regular overtime compensation for work performed on an occasional Saturday or Sunday, even though such work is ordered. However, if such work is required on a regularly scheduled basis, such as every Saturday during the summer season, the employee would be entitled to regular overtime for such Saturday work.

.12 Sunday Pay. Only full-time employees will receive premium pay for Sunday work. A full-time employee whose regularly scheduled tour of duty includes a period of service of less than 8 hours any part of which falls between midnight Saturday and midnight Sunday is entitled to premium pay for the number of hours worked not to exceed the lesser of (a) the number of hours regularly scheduled for such period, or (b) 8 hours per tour. Hours worked in excess of these limits per tour would entitle the employee to overtime compensation. (See the Federal Employees' Salary Act of 1966 for applicability to wage board employees.)

