OVERTIME

Effective Date: May 3, 2019

Related DPM Chapters: 11B, 12
Overview

The District government ("District") strives to provide all employees compensation that is competitive with the regional market and in accordance with federal and District of Columbia law. When public business necessitates overtime work, most employees are entitled to an overtime premium. This issuance outlines the District’s overtime policy on overtime eligibility, compensation, and approval requirements.

NOTE: This instruction supersedes DPM Instruction No. 11-88, Overtime, dated November 23, 2016, DPM Instruction No. 11B-61, Exempt Time Off, dated June 19, 2008, and DPM Instruction No. 11B-47, Overtime Compensation under the FLSA and Discretionary Non-Union Career Service Overtime Compensation, dated April 4, 2005 to reflect regulatory changes made to eligibility for Exempt Time Off and update the Overtime approval requirements.

Ventris C. Gibson, Director
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Overtime refers to the amount of time an employee works beyond the normal scheduled tour of duty. In some cases, employees are either entitled to or eligible for additional compensation for overtime work. In lieu of overtime pay, agencies may provide additional compensation or time off in the form of compensatory leave or exempt time-off.
Eligibility

Most employees must be provided overtime compensation under federal law. Employees who are exempt from the federal overtime requirements may be eligible for discretionary overtime compensation. The following outlines when overtime is mandatory, when it is discretionary, and when it is prohibited.
Mandated
Employees must receive overtime compensation when they are:

1. Required or allowed to work more than 40 hours in a single workweek for typical schedules, or more than 80 hours in a pay period for a compressed work schedule; and

Discretionary
An agency may provide overtime compensation to employees who are:

1. Approved or required, in writing, to work more than eight hours in a pay status in a workday or more than 40 hours in a pay status in a workweek;
2. Exempt from the overtime provisions of the FLSA;
3. Serve at a Grade 7 or below in the Excepted Service, or at a Grade 14 or below in the Career, Educational, Legal, or Management Supervisory Service.

Ineligible
The following employees are ineligible for overtime compensation:

1. Executive Service employees;
2. Supervisory attorneys paid from the LX schedule;
3. Excepted Service employees at a Grade 8 or above; and
4. Employees at a Grade 15 or above in the Career, Educational, Legal or Management Supervisory Service.
Compensation

Overtime for non-exempt employees is computed under the Fair Labor Standards Act (FLSA). Under the FLSA, overtime pay is calculated by multiplying an employee’s “straight time rate of pay” by all overtime hours worked PLUS one-half of the employee’s “hourly regular rate of pay” times all overtime hours worked.
Mandatory Compensation (Non-Exempt employees)

Overtime pay for employees designated as “FLSA non-exempt” is computed according to the FLSA. FLSA non-exempt employees must receive compensation for overtime hours worked that is requested and approved by a supervisor, or for overtime hours worked by the employee where the supervisor has reason to believe that the employee is “working off the clock.” DCHR recommends that agencies work to ensure that managers are aware of, and are properly managing, when employees work outside their scheduled tour of duty.

Employees entitled to overtime compensation may elect to receive compensatory time as accrued leave instead of pay. Such leave accrues at the rate of one and one-half times the number of overtime hours worked. (Compensatory time is discussed in more detail below.)

Discretionary Compensation (Exempt employees)

Overtime compensation for some exempt employees is computed only in accordance with the section below. Before any overtime may be provided, it must be approved in writing and in advance of the overtime work, except when the overtime work is necessitated by an emergency.

Grades 12 and below (and the Excepted Service equivalent)

Employees in the Career, Educational, Legal (except those paid from the LX salary schedule), and Management Supervisory services at Grades 12 and below, and employees in the Excepted Service at Grades 7 and below, may receive overtime compensation computed under FLSA. In short, such employees may receive pay at one and one-half times the regular salary for overtime hours worked, or receive exempt time-off hours at one and one-half times the number of overtime hours worked. (Exempt time-off is discussed in more detail below.)

Grades 13 and 14 (and the Excepted Service equivalent)

Employees in the Career, Educational, Legal, and Management Supervisory services at Grades 13 and 14, and employees in the Excepted Service at Grade 7, may receive overtime compensation at their standard equivalent hourly rate for overtime work. Such employees may receive pay at their regular hourly rate times the number of overtime hours worked, or receive exempt time-off hours at one-hour times the number overtime hours worked.
Compensatory Time

Rather than receiving overtime pay, an employee who is eligible to receive overtime compensation under the FLSA may elect to accrue compensatory time. Compensatory time is an authorized absence from official duty in lieu of payment of authorized overtime. When authorized, compensatory time has the following features:

- Accrues in 15-minute increments for actual overtime worked;
- Limited to a maximum of 240 hours per leave year, except for public safety, emergency response and seasonal employees who may accrue a maximum of 480 hours per leave year;
- May be used in one-hour increments like annual leave (subject to the same limitations and requirements);
- Should be used within 3 months after it is earned, unless it is impractical to do so; and
- Employees shall receive a lump-sum payment for unused compensatory time upon separation from District government service, regardless of the nature of the separation.

Exempt Time Off

Agency heads may authorize “Exempt Time Off” rather than providing overtime pay for employees who are exempt from the Fair Labor Standards Act (FLSA). Agency heads may also authorize the accrual of exempt time off for work performed beyond the employee’s regular tour of duty that is more than the 80 hours in a biweekly pay period for employees serving at a Grade 15 or above, or the Excepted Service equivalent. When authorized, Exempt Time Off accrues on an hour-for-hour basis. Exempt Time Off has the following features:

- Accrues in one-hour increments for actual overtime worked;
- Limited to 80 hours off per leave year, although an employee may receive approval from the personnel authority to accrue up to 120 hours per leave year because of emergencies or other unforeseen circumstances;
- May be used in one-hour increments like annual leave; and
- Must be used by the end of the leave year following the leave year in which it is earned, or it is forfeited.

NOTE: Exempt Time Off has no cash value. If an employee separates from District service, he or she will not receive any payments for accrued Exempt Time Off.
Overtime work must be officially ordered and approved in advance. Agency heads and their designees are authorized to order and approve overtime work provided the agency has sufficient funding available.

Overtime should be approved using DCSF No. 11B-12, Request for Authorization of Overtime Work (See Attachment 1). However, when responding to an immediate operational need, pre-approval may be memorialized in any written form, such as e-mail, and followed-up with the official overtime approval.

Completed overtime forms and any supporting documentation should be submitted to the employee’s timekeeper for processing.
Exempt Employees

As noted above, unless exempt from the overtime provisions of the FLSA, employees must receive overtime compensation when they are required or allowed to work more than 40 hours in a typical workweek or 80 hours in a pay period under a compressed work schedule. The D.C. Department of Human Resources (DCHR) is responsible for classifying employees as either exempt or non-exempt under the FLSA. DCHR classifies employees as “exempt” if they meet one of the following exemptions:
Administrative Exemption

A position will be designated as exempt under the administrative employee exemption if:

- The salary equals or exceeds $23,660 annually;
- The position’s primary duty is the performance of office or non-manual work directly related to the management or general business operations of the agency or the agency’s customers; and
- The position’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

For more detailed information, please refer to the Department of Labor’s (DOL) Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA).

Computer Exemption

A position will be designated as exempt under the computer employee exemption if:

- The salary equals or exceeds $23,660 annually;
- The position is one of a computer system analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field performing duties consisting of:
  - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - A combination of the aforementioned duties, the performance of which requires the same level of skills.

For more detailed information, please refer to the Department of Labor’s (DOL) Fact Sheet #17E: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA).
Executive Exemption
An employee will be designated as exempt under the executive employee exemption if:

- The salary equals or exceeds $23,660 annually;
- The employee’s primary duty is managing the District, an agency, an office or another recognized subdivision of the District;
- The employee customarily and regularly directs the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

For more detailed information, please refer to the Department of Labor’s (DOL) Fact Sheet #17B: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA).

Professional Exemption
An employee will be designated as exempt under the professional employee exemption if:

- The salary equals or exceeds $23,660 annually;
- The employee’s primary duty is the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge is in a field of science or learning; and
- The advanced knowledge is customarily acquired by a prolonged course of specialized intellectual instruction.

For more detailed information, please refer to the Department of Labor’s (DOL) Fact Sheet #17D: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA).
Highly-Compensated Exemption
An employee will be designated as exempt under the highly-compensated employee exemption if:

• The salary equals or exceeds $100,000;
• The position’s primary duty includes performing office or non-manual work; and
• The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

For example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all the other requirements in the standard test for exemption as an executive.

For more detailed information, please refer to the Department of Labor’s (DOL) Fact Sheet #17H: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA).
Manager Liability & Other Penalties


**Willful Violations of the FLSA**

Any person, such as a manager or supervisor, who willfully fails to adhere to the overtime standards established under the FLSA, may be prosecuted criminally. The penalties for willful violations of the FLSA include:

- A fine of up to $10,000; and/or
- Imprisonment for up to 6 months.

**District Liability**

Whenever the District fails to comply with the FLSA, the District is liable to the employee or employees affected by the District’s failure to comply. The District’s liability includes:

- **Damages.** Employee are entitled to receive unpaid overtime compensation;
- **Liquidated damages.** In addition to unpaid compensation, the employee is entitled to an amount equal to the unpaid compensation. For example, if an employee is underpaid by $100, the District would be liable to the employee for $200 ($100 unpaid compensation plus $100 liquidated damages);
- **Legal expenses.** If the employee prevails, the District may be ordered to pay reasonable legal fees.
Legal Authorities

2. D.C. Code § 1-612.01(b)(4).
3. 6B DCMR §§ 1132 - 1139
4. 6B DCMR §§ 1245 - 1248

Applicability

The provisions of this instruction apply to agencies under the Mayor’s personnel authority except:

- Sworn members of the Metropolitan Police Department;
- Uniformed members of the Fire and Emergency Medicals Services Department; and
- Employees organized under a recognized collective bargaining agreement, to the extent the agreement differs from this issuance.
Additional Information

For additional information concerning this instruction, please contact the DCHR’s Policy and Compliance Administration, by calling (202) 442-9700 or by sending an e-mail to dchr.policy@dc.gov.

You may also visit https://www.dol.gov/whd/overtime_pay.htm for additional information on the overtime provisions of the Fair Labor Standards Act.
Attachment 1 - Overtime Approval Form
Attachment 2 - Time Entry and Overtime Reporting Examples