

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

District Personnel Manual Issuance System

This instruction should be filed
behind the divider for Part III of
DPM Chapter(s) 11B

DPM Instruction No. 11B-66

SUBJECT: Overtime Policy for *FLSA-Exempt* Positions –
AMENDMENT

Date: December 2, 2008

NOTE: This District Personnel Manual (DPM) instruction supersedes DPM Instruction No. 11B-63, *same subject*, dated July 30, 2008.

1. Purpose

The purpose of this DPM instruction is to reiterate the District government's policy concerning the payment of overtime to employees whose positions are designated as "*exempt*" under the Fair Labor Standards Act of 1938 (FLSA), as amended.

2. Overtime Policy

District government employees whose positions are designated as "*FLSA-exempt*" shall not be eligible for overtime compensation unless and only when meeting the conditions and criteria detailed below.

3. Overtime Standards under the FLSA

- a. The FLSA establishes various labor standards for the private and public sectors, including minimum wage, overtime, and compensatory time in lieu of paid overtime.
- b. The provisions of the FLSA are applicable to the District government.
- c. Based on the duties of the position they occupy, the FLSA divides employees into 2 categories: "*FLSA-non exempt*" and "*FLSA-exempt*." An employee's FLSA category (or status) will determine whether he or she is eligible for FLSA overtime compensation for authorized (approved) overtime work performed:

- (1) ***FLSA nonexempt*** employees are eligible for FLSA overtime compensation for authorized overtime work performed.
- (2) ***FLSA exempt*** employees are not eligible for FLSA overtime compensation for overtime work performed.

Note: DPM Instructions that are strictly procedural in nature have direct applicability only to agencies and employees under the personnel authority of the Mayor. Other personnel authorities or independent agencies may adopt any or all of these procedures or guidance materials for agencies and employees under their respective jurisdictions. [See DPM Chapter 2, Part II, Subpart 1, § 1.3]

Inquiries: Compensation and Classification Administration, DCHR (202) 442-9700

Distribution: Heads of Departments and Agencies, HR Advisors, and DPM Subscribers

Retain Until Superseded

- d. Under the FLSA, compensatory time may be approved “*in lieu of*” (instead of) paid overtime compensation for *FLSA-non exempt* overtime work performed.
- e. The FLSA criteria for exemption are:
 - (1) **Administrative Exemption** – The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers. Employees in this job category exercise discretion and independent judgment with respect to matters of significance. Employees in this job category evaluate and compare possible courses of action and then make a decision or recommendation after considering the various possibilities.
 - (2) **Executive Exemption** – The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise. The employee customarily directs the work of two (2) or more other employees or their equivalent. The employee in this job category has the authority to hire or fire, and his or her recommendations carry significant weight in, or is, the final decision.
 - (3) **Professional Exemption (Learned Professional)** – The employee’s primary duty must be 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. Employees in this job category typically have/require advanced knowledge obtained by completing an academic course of study resulting in a four-year (4-year) college degree or leading to certification.
 - (4) **Professional Exemption (Creative Professional)** – The employee’s primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or prolonged course of specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. The employee in this job category’s primary duty is to perform work requiring invention, originality, or talent in a recognized field of artistic endeavor such as music, writing, acting, and the graphic arts.
 - (5) **Computer Employee Exemption** – The employee must be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field, performing the duties such as:
 - (a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - (b) 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;
 - (c) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
 - (d) A combination of the aforementioned duties, the performance of which requires the same level of skills.

- (6) **Highly Compensated Employee Exemption** – Highly compensated employees performing office or non-manual work, and paid total annual compensation of \$100,000 or more are exempt from the FLSA if they customarily and regularly perform at least one (1) of the duties of an exempt executive, administrative, or professional employee identified in the standard tests for exemption.

[Additional information regarding the FLSA may be obtained by visiting the *U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division's* Website at www.wagehour.dol.gov]

- f. Based on the duties of the position, and utilizing the exemption definitions above, the following District government positions would typically not be eligible for overtime:

- (1) Management Supervisory Service positions – all grade levels;
- (2) Excepted Service positions at pay levels ES-06 and above that meet the FLSA exemption criteria above;
- (3) Executive Service positions – all pay levels;
- (4) Legal Service Senior Executive Attorney Service (SEAS) positions – all grade levels; and
- (5) Non-union Career Service positions at grade levels 12 and above (or equivalent) that meet the FLSA exemption criteria above.

4. Authorization to Compensate Certain FLSA-Exempt Non-Union Employees for Overtime Work Performed; Conditions and Criteria under which such Compensation may be Authorized

Notwithstanding the provisions in paragraph 2 and subparagraph 3 (f) of this instruction, *FLSA-exempt* non-union employees meeting the following conditions and criteria shall receive compensation for overtime:

a. Conditions

The conditions under which an agency director (or his or her designee) is authorized to approve overtime pay for FLSA-exempt non-union employees as described in paragraph 4 (b) below are:

- (1) Declared emergencies by the Mayor or City Administrator.
- (2) Special conditions or projects that are related to carrying out the efficiency and integrity of government operations as determined by an agency director (or designee).

- (3) Public safety and after-hour emergency response duties requiring operations support outside of the employee's scheduled tour of duty.
- (4) Snow removal activities.
- (5) Events/incidents that are paid or reimbursed by non-local funds (i.e. federal events, festivals, grants, etc.).

Except in emergency situations, all overtime worked by an FLSA-exempt employee shall be authorized in advance and approved in writing by the agency director (or designee). Employees shall not work in excess of authorized scheduled hours without express approval of the agency director (or designee). In emergency situations, the approval of the overtime work shall be documented no later than the following day.

b. Criteria for Covered Employees

Except for emergency situations, hours worked in excess of 80 hours in a 2-week pay period under any of the conditions listed in paragraph 4 (a) above, provided that the overtime work has been authorized in advance, in writing, shall be compensated as follows:

- (1) FLSA-exempt non-union Career Service employees at grade levels CS-12 and below shall receive either overtime pay or Exempt Time Off, or a combination, at 1½ times their regular rate of pay for all hours worked in excess of 80 hours in a 2-week pay period. While the employee may request the form of compensation, the actual form of compensation is at the discretion of the agency director (or designee).
- (2) FLSA-exempt non-union Career Service employees at grade levels CS-13 and 14 shall receive either hour-for-hour overtime pay or hour-for-hour Exempt Time Off, or a combination, for all hours worked in excess of 80 hours in a 2-week pay period. While the employee may request the form of compensation, the actual form of compensation is at the discretion of the agency director (or designee).
- (3) MSS employees at grade levels MS-14 or below shall receive either hour-for-hour overtime pay or hour-for-hour Exempt Time Off, or a combination, for all hours worked in excess of 80 hours in a 2-week pay period. While the employee may request the form of compensation, the actual form of compensation is at the discretion of the agency director (or designee).
- (4) Excepted Service employees at pay levels ES-6 and below shall receive overtime pay or Exempt Time Off, or a combination, at 1 ½ times their regular rate of pay for all hours worked in excess of 80 hours in a 2-week pay period. While the employee may request the form of compensation, the actual form of compensation is at the discretion of the agency director (or designee).

5. Exclusions

The following employees are excluded from the provisions in paragraph 4 above, and shall not receive overtime pay or Exempt Time Off:

- a. Non-union Career Service employees at grade levels CS-15 and 16;
- b. Non-union Legal Service employees not in the Senior Executive Attorney Service (SEAS);
- c. Employees in the SEAS within the Legal Service paid from the LX salary schedule;
- d. Excepted Service employees at pay levels ES-7 and above;
- e. Management Supervisory Service employees at grade levels MS-15 and MS-16; and
- f. Executive Service employees (all pay levels).

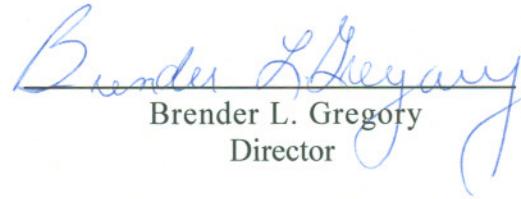
6. Other Provisions

- a. The decision to pay overtime at 1½ times an eligible employee's regular rate of pay, or on an hour-for-hour basis, shall not be made based on the funding source from which the payment is being made (i.e., local funds vs. other type of funds). That is, the provisions of paragraph 4 (b)(1) through (4) of this instruction shall be strictly followed in determining the rate at which the overtime payment will be made, regardless of the funding source.
- b. Under certain circumstances, Exempt Time Off may accrue up to a maximum of 120 hours. *See* section 1138.5 of Chapter 11 of the D.C. personnel regulations, Hours of Work, Legal Holidays, and Leave
- c. Employees are not eligible to receive payment for any accrued Exempt Time Off accrued at the time of separation from District government service.
- d. Exempt Time Off will be forfeited (lost) if not used by end of the leave year following the leave year in which it was earned. *See* section 1138.7 of Chapter 11 of the regulations
- e. Exceptions to the conditions and criteria specified in paragraph 4 of this instruction shall only be made with the express written consent from the Mayor or City Administrator.

7. Agencies' Compliance with Overtime Policy

- a. Strict compliance with this policy and the overtime regulations is required from all agencies.

- b. Any previous non-compliance with the overtime policy herein does not and shall not establish a waiver of compliance with the official overtime regulations and the policy communicated in this instruction.


Brender L. Gregory
Director