Hours of Work & Overtime

PURPOSE
To define work hours for which compensation is required, establish overtime pay rates, and authorize appointing authorities to set hours of operation and work schedules for employees that meet operational needs.

SCOPE
This policy applies to employees in the state civil service except law enforcement officers, Airfield Firefighters, or IDOC custody employees.

STATEMENT OF POLICY
Regular attendance and punctuality are an important part of each state job, and it is the policy of the executive branch of Indiana state government that determining scheduling needs and enforcing attendance requirements is best accomplished at the local or employing agency level. Appointing authorities shall determine work schedules necessary for the effective operation of the agency.

The standard work schedule for state employees is seventy-five (75) hours per biweekly pay period, unless otherwise authorized by the State Personnel Director and State Budget Agency under 31 IAC 5-7-8(b) or by Financial Management Circular.

Overtime-eligible employees are prohibited from working overtime unless it is authorized in advance by management. An employing agency's policy may authorize overtime in specified circumstances.

It is the State's policy to compensate overtime-eligible employees for all hours worked.

Work schedules shall be managed to ensure staffing levels are appropriate for the workload, minimize overtime compensation, and avoid excessive overtime hours by individual employees. Overtime-eligible employees shall not be scheduled for nor work more than 40 hours in a calendar week nor more than 75 hours in a biweekly pay period without prior agency authorization.

Overtime-eligible employees shall:
1) Record all hours worked accurately, in the designated timekeeping system for their agency.
2) Record time daily, if there is any deviation from the anticipated work schedule.

Overtime-eligible employees should not check or respond to work-related electronic messages while off-duty, unless agency management has issued clear orders requiring off-duty follow-up action (e.g., emergency responders). Checking messages for the employee's own convenience or for trivial amounts of time (less than ten minutes daily) is not compensable.

Policies for compensating overtime-exempt employees in exceptional circumstances are set forth in 31 IAC 5-7 and the relevant Financial Management Circulars.

REFERENCES
29 USC 2001 et. seq.
29 C.F.R. 541, 553, 778, 785, 790
IC 4-1-2-1
IC 4-15-2.2-1
IC 4-15-2.2-10
IC 4-15-2.2-15
IC 4-15-2.2-39
31 IAC 5-7
31 IAC 5-8
Financial Management Circulars (latest versions regarding):

1) Classifications eligible for premium overtime compensation; and
2) Compensatory time off for employees exempt from premium overtime compensation.

EFFECTIVE DATE November 20, 2016
Supersedes: Hours of Work & Work Schedules Policy dated August 1, 2012
Overtime Assignments Policy dated August 1, 2012

APPROVAL _____
Jon D. Darrow, State Personnel Director

Note: Statements herein do not apply to law enforcement officers, Airfield Firefighters, or IDOC custody employees [i.e., those covered by 29 USC 207(k), 29 CFR 553.200 et. seq., 31 IAC 5-7-8, or related provisions in the current Financial Management Circulars]. Other specific and unique policies apply to the foregoing classifications.

DEFINITIONS

Exempt Employees: Those employees who are not covered by the overtime pay provisions of the Fair Labor Standards Act and/or applicable state rules and policies on premium overtime pay. They are also known as overtime ineligible employees.

Overtime: Compensable hours worked by an overtime-eligible employee, in excess of thirty-seven and one-half (37.5) hours in a week.

Overtime-eligible Employees: Those employees who are covered by the overtime pay provisions of the Fair Labor Standards Act and/or applicable state rules and policies on premium overtime pay. They are also known as "non-exempt employees".

Regular hourly rate: An employee's regular hourly rate shall be calculated by dividing his/her base biweekly salary by seventy-five (75).

Straight Overtime: Hours worked by an overtime-eligible employee in excess of thirty-seven and one-half (37.5) hours in a work week, but less than or equal to forty (40) hours in a work week and for which compensation is at the employee's regular hourly rate.

Premium Overtime: Hours worked by an overtime-eligible employee in excess of forty (40) hours in a work week and for which compensation is at a time and one-half rate.

Work Schedule: An employee's assigned hours of work. Full-time schedules shall equal seventy-five (75) hours in each biweekly pay period unless otherwise approved by the State Personnel Director and State Budget Agency. Overtime-eligible employees shall not be scheduled for nor work more than 40 hours in a calendar week without authorization.

RESPONSIBILITIES & PROCEDURES

Exempt Employees are responsible for:

- performing all assigned work;
- working all scheduled hours and/or complying with notice requirements for requesting use of leave; and
- accounting for a minimum of 75 hours of work and/or use of available, appropriate approved leave in each biweekly pay period, in the designated timekeeping system for their agency, if employed on a full-time basis.

Overtime-eligible Employees are responsible for:

- reporting all hours worked in the designated timekeeping system (Note: The employer is not liable if the employee fails to follow the reasonable, established process for recording and reporting off-duty work.);
- working all scheduled hours and/or complying with notice requirements for requesting use of leave;
- taking meal periods as scheduled;

- not checking or responding to work-related electronic messages (more than a de minimis amount) while off-duty, unless agency management has issued clear orders requiring off-duty follow-up action (e.g., emergency responders);
- obtaining authorization before working hours in excess of the regularly established work schedule;
- not working unauthorized overtime; and
- performing any overtime work for which the employee has volunteered or been assigned.

Employer is responsible for:

- planning and managing the work and work schedules to minimize the need for overtime hours and payment;
- communicating the agency's policy containing prior authorization for overtime in specified foreseeable and exigent circumstances;
- exercising control to not permit unauthorized work to be performed by an overtime-eligible employee;
- clearly identifying which electronic messages require follow-up action by overtime-eligible employees who are off-duty and which messages do not require off-schedule action by such employees;
- assigning overtime work in the manner most advantageous to the State and consistent with the requirements of state employment and the public interest; and, (when weighing whether the public interest is paramount) giving consideration to the employee's requests;
- offering, in advance, compensatory time off as the alternative means of compensation for voluntary overtime whenever compensatory time off is in the best interest of the State; and, making additional monetary payments (rather than offering compensatory time off) when that is in the best interest of the State;
- ensuring employees have reasonable opportunities to use compensatory time off;
- making payment for hours earned as compensatory time off for overtime work, if compensatory time off is not used within the quarter succeeding the quarter in which it is earned, unless otherwise approved by the State Personnel Director and State Budget Agency;
- making reasonable efforts to secure volunteers for appropriate assignments; however, employees should not perform overtime duties of a classification if the employee's salary is above the maximum of the pay range of the classification where the duties are needed unless such work has been approved by SPD/SBA;
- paying overtime-eligible employees who work overtime without approval, but taking corrective (including potentially disciplinary) action to prevent recurrence;
- prohibiting overtime-eligible employees from volunteering unpaid time to perform (for the employing agency) the same type of services which the individual is employed to perform;
- verifying the accuracy of the reporting of time worked;
- submission of an overtime expenditure plan to the Strategic Hiring Committee and providing notice, within one business day, if overtime liability accrues in emergency situations that are not contemplated in the overtime budget;
- referring to the agency human resources office any employee who has requested an exemption from overtime assignments due to his/her disability; so that, the agency human resources office can engage the employee in an interactive process and require documentation to determine whether a reasonable accommodation (that will enable the employee to perform the essential functions of his/her job) is appropriate and available; and
- consistently applying this policy.

Planning and Managing Work

Overtime-eligible employees are not entitled to work overtime hours, but are only entitled to payment if such compensable hours are, in fact, worked. Therefore, management is responsible for establishing and adjusting work schedules in a manner that meets operational needs and minimizes the need for overtime work. This may include actions such as:

- Assigning staff to alternative work schedules that better meet operational needs or minimize overtime liability, for example, by allowing longer blocks of time for travel or projects on specific days.
- Making temporary work schedule adjustments that better meet operational needs or minimize overtime liability.
  - Note that work in excess of 7.5 hours a day is not overtime. Total hours worked, by a overtime-eligible employee, in excess of:
    - 40 hours in a calendar week; or
    - 75 hours for the biweekly pay period

    create an entitlement to additional compensation. If an overtime-eligible employee works over 7.5 hours in one day, the employee may be scheduled fewer hours on another day so that the total hours worked do not exceed:
    - 40 hours for that week; or
    - 75 hours for the pay period.
- Substituting additional hours worked in a calendar week to reduce the amount of leave used.
- The State must not permit work for which it did not intend to pay. If overtime is not approved, do not allow performance of the work.
- Counseling (and if necessary discipline) must be imposed to correct the behavior of overtime-eligible employees who ignore prohibitions against off-duty work or supervisors and managers who allow off-duty work without having proper authorization. Even when the prerequisites were not met (i.e., off-duty work is performed without approval or even contrary to instructions), overtime that was worked will be compensated.

Agencies may develop policies and procedures for making overtime assignments. Such policies and procedures may address considerations relevant to the agency or worksite such as any limitations on total overtime within specified periods of time, provisions allowing refusals of assignments, allowing employees to make arrangements with qualified co-workers to split or share overtime assignments, and procedures for requesting volunteers or mandating assignments.

Determination of "Hours Worked"

Travel Time

Home to Work Travel: An overtime-eligible employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

Home to Work on a Special One Day Assignment in Another City: An overtime-eligible employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may not count that time the employee would normally spend commuting to the regular work site.

Travel That is All in a Day's Work: Time spent by overtime-eligible employees in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

Travel Away from Home Community: Travel that keeps an overtime-eligible employee away from home overnight is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. USDOL Wage and Hour Division does not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Training Time

Attendance by overtime-eligible employees at lectures, meetings, training programs and similar activities, given by the employer or under the employer's auspices, is counted as working time unless all of the following four criteria are met:

(1) Attendance is outside of the employee's regular working hours;
(2) Attendance is in fact voluntary;
(3) The course, lecture, or meeting is not directly related to the employee's job; *and*
(4) The employee does not perform any productive work during such attendance.

If an employee voluntarily attends lectures, training sessions, or courses offered by an independent purveyor of learning, on the employee's own initiative, that voluntary attendance is not counted as hours worked, even if directly related to the job or paid for by the employer.

On-call Time

Time spent "on call" (not at the duty station and "waiting to be engaged") can effectively be used primarily for the employee's own purposes. Simply requiring the employee to provide contact information, or to refrain from using alcohol, or to respond within a reasonable time is not overly controlled by or primarily for the employer's business. On-call time is not compensable.

Off-duty Communication Guidelines

- The ability to be constantly connected by mobile and other electronic devices requires both overtime-eligible employees and supervisors/managers to monitor off-duty, work-related communications and exercise restraint to avoid the performance of unauthorized overtime work. **Overtime-eligible employees should not check or respond to work electronic messages while off duty, unless agency management has issued clear orders requiring off-duty follow up** (e.g., emergency responders).
- Work that is necessary, time sensitive, and substantial will be compensated. For example, a supervisor-directed official "call-back" assignment, requiring immediate performance of a substantial task, includes authorization for overtime compensation or anticipation of a work schedule adjustment.
- Not every response to a phone call or follow up on an email is compensable work activity, such as communications that are brief, merely informational, and plainly do not require an immediate response. Overtime-eligible employees checking messages for their own convenience or for trivial amounts of time (less than 10 minutes daily) is not compensable.
- Overtime-eligible employees shall document (date, time, description) and report substantial, off-duty, remote access and must follow the employing agency's process for seeking overtime compensation (submission of overtime reports, entries on PeopleSoft Time and Labor, etc.).

Family-Medical Leave (FML) Absences from Overtime Assignments

If an employee cannot perform a mandatory overtime assignment due to the reason for which the employee has approval for FML, then the number of hours declined for the overtime assignment shall be charged against the employee's balance of FML; however, no employment consequences shall be imposed for not performing the overtime assignment.

Transition of Compensatory Time-Off for Formerly Exempt Employees

Compensatory time off that:

1) was authorized and earned per Financial Management Circulars (FMC) #2013-04, #2004-02, or #87-2.1, prior to November 20, 2016, and
2) is on the account of an employee whose eligibility for premium overtime compensation changes from exempt to eligible as a consequence of the changes to 29 CFR Part 541, effective November 20, 2016

remains on account and may be used by the employee, after November 20, 2016, in accordance with the terms of the FMC that was in effect at the time the compensatory time off was accrued.

Recordkeeping

Employees must follow the employing agency's process for seeking overtime compensation (submission of time reports, entries on PeopleSoft Time & Labor, etc.). Courts have held that an employer is not liable if the employee fails to follow the reasonable, established process for recording and reporting off-duty work.

Enforcement

Employees not properly compensated for overtime work, may file a civil service complaint, following the procedure at IC 4-15-2.2-42.

REFERENCES

29 USC 2001 et. seq.
29 C.F.R. 541, 553, 778, 785, 790
IC 4-1-2-1
IC 4-15-2.2-1
IC 4-15-2.2-10
IC 4-15-2.2-15
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