

DEPARTMENT OF MILITARY AFFAIRS
STATE HUMAN RESOURCES
PRACTICE AND PROCEDURE MANUAL

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SUBJECT: Overtime for FLSA Exempt Employees

SECTION: Compensation

I. OVERVIEW

In accordance with federal and state laws and guidelines, employees who are exempt from the overtime provisions of the Federal Fair Labor Standards Act (FLSA) are considered to be compensated for the total responsibilities of the position regardless of the number of hours worked. Under provisions of the State of Wisconsin Compensation Plan, employees who are FLSA exempt (salaried) are not eligible for overtime, compensatory time, or differentials unless there are special circumstances authorized by the appointing authority or designee. If authorized, overtime compensation may be in the form of cash payment or compensatory time credits, as the employer elects.

For more detailed information regarding FLSA administration, please refer to Section A-4.00 of the [Compensation Plan](#) and [Chapter 520](#) of the Wisconsin Human Resources Handbook. To ascertain the FLSA designation of a classification, please visit the Office of State Employment Relations [Reference Center](#) to view the *Alphabetical Listing of Classifications*. To find out the FLSA status of a particular employee, view the employee's *Position Information* screen on PTA. An "E" in the FLSA status field denotes Exempt. Or, contact DMA Payroll at (608) 242-3167 or 242-3165. Please note that Limited Term Employees are almost always FLSA non-exempt even if their permanent counterpart is Exempt.

Overtime is defined as those hours worked in excess of 40 per week for employees working a standard 40 hour per work week schedule; and those hours worked in excess of 80 per pay period for employees working a non-standard schedule (e.g., 36 hours one week, 44 hours the next). Please note that full time FLSA non-exempt employees do not have the option of working a non-standard schedule because premium overtime for hours worked in excess of 40 is automatically incurred.

Fire Crash Rescue Supervisors: The basis for overtime for employees in this classification is hours worked in excess of 106 per pay period. FCR Supervisors will continue to be paid at straight rate for all scheduled shift work. Overtime for hours worked outside of shift work will be subject to the provisions of the Compensation Plan and the policy and procedure within this bulletin.

II. POLICY

- A. FLSA exempt employees within DMA will be set up in PTA to be paid by default, except for Fire Crash Rescue Supervisors and the Nurse Clinician 2. This means that full time, exempt employees will be paid for an 80 hour pay period, regardless of hours reported, unless an exception is requested and approved in accordance with the following policies and procedures.
- B. Permissive Overtime Exceptions: DMA may grant exceptions for FLSA exempt employees not normally eligible to receive overtime compensation, subject to approval of the appointing authority or designee. The following factors will be considered when reviewing and granting/denying requests.
- 1) The number of additional hours of scheduled work required by the employer is on a frequent and recurring basis (i.e., if only a few overtime hours are worked on an occasional basis, additional compensation will not normally be granted). FLSA exempt employees may choose to work additional hours and need not be compensated with overtime.
 - 2) The employer has pre-approved the overtime compensation before it is worked except for emergency situations which could not be foreseen. (See examples of *emergencies* in III.A.4.)
 - 3) The status of additional compensation for overtime hours paid to subordinates or comparable employees. For example, Exempt employees assigned to pay range 81-01 or 81-02, or equivalent, will generally not receive overtime as these are executive level positions. Exempt employees assigned to lower pay ranges and pay rates may be more favorably considered.
 - 4) The use of "Professional Time" (definition below) is insufficient and/or impractical to compensate for extra hours worked.

Professional time is a concept that enables supervisors to recognize extra time worked by an employee, either on a regular basis or for a concentrated period of time. Professional time is not recognized or recorded as available leave. Professional time may be granted to an FLSA exempt employee in recognition of his/her status as a professional for additional time worked in excess of his/her scheduled hours of employment. It is not meant to cover those extra hours that may qualify for compensatory time. Professional time need not be approved on an hour-for-hour basis for extra work beyond the employee's scheduled hours of employment. FLSA exempt employees have a degree of job responsibility and flexibility neither assumed nor granted to other employees.

- C. Mandatory Overtime Exceptions: There are limited circumstances when certain supervisory employees, listed below, must receive overtime compensation subject to specific, qualifying conditions. If these conditions are not met, consideration may still be given to granting permissive overtime exception.
- 1) If all of the following conditions apply, the supervisor must be paid overtime compensation at the regular or premium rate, depending on the employee's Data Processing Unit Code.

- a. The supervisor's position is assigned to pay range 81-04 or a counterpart pay range in a different schedule or lower;
 - b. The supervisor is directed to work hours in addition to his/her normal work hours and such additional work hours result in overtime hours;
 - c. The purpose of the additional work hours is to supervise employees who also are directed to work additional hours;
 - d. The additional work hours of the employees supervised generate overtime compensation for that workweek or work period; and
 - e. The additional work hours of both the supervisor and employees supervised are generated by the same cause or situation.
- 2) Within the DMA, only the following supervisory classifications are subject to C.1 above:
- a. Building and Grounds Supervisors;
 - b. Cadet Specialist Supervisors*;
 - c. Custodial Services Supervisors;
 - d. Fire Crash Rescue Supervisors*;
 - e. Military Affairs Security Officer Supervisors*;
 - f. Office Management Supervisors.

<p>*Note: Supervisors in these classifications who are normally scheduled to work during hours that incur night or weekend differential will continue to be paid those differentials.</p>

III. PROCEDURE

- A. Requests for overtime compensation for FLSA exempt employees must be submitted in the following manner. Blanket requests for on-going overtime will not be approved without prior discussion and agreement from the SHR Director. Blanket request approvals will be documented in the same manner as below.
- 1) Use the Request for FLSA Exempt OT form to request OT exception.
 - 2) The request must be complete and signed by all parties.
 - 3) A signature field is provided for top level chain-of-command; i.e. Base Commanders, Division Administrators, and Directorate Director. A designee signature implies that the approval would be supported by the highest level in the chain of command.
 - 4) Except for emergencies, submit requests to the SHR Director at least one week in advance of the anticipated overtime need, if possible. Emergencies are those situations that could not be foreseen, and include weather related emergencies or other natural disasters, HVAC, and information technology needs that, if not immediately addressed, will significantly impair operability.

Note: If the overtime request meets the conditions of Mandatory Overtime Exception, per II.C. above, the justification must include details specific to these conditions to confirm applicability of this provision.

- B. A decision will be rendered following a review of requests for overtime exceptions and DMA Payroll will be instructed to process approved overtime.
- 1) To record approved Permissive Overtime Exceptions in PTA, employees are to use the "94 - Regular Overtime" code under the *Leave Type* drop down.
 - 2) Approved Mandatory Overtime Exceptions will be processed in PTA manually by DMA Payroll.

Supervisors should direct questions regarding the policies and procedures to their assigned Human Resources Specialist.

WISCONSIN DEPARTMENT OF MILITARY AFFAIRS
REQUEST FOR FLSA EXEMPT EMPLOYEE OVERTIME EXCEPTION

MANDATORY OVERTIME (OT) EXCEPTIONS:

Mandatory OT Definition: Limited circumstances when the employer is **required** to provide overtime compensation, **only** to employees with **specific supervisory** titles, and **only** when specific, qualifying conditions are met. Mandatory OT, in this context, does **not** mean that the additional hours to be worked and tasks to be performed were important, *mandatory*, or otherwise required by the employer.

If the supervisory employee is in a covered title, as shown below, **and** all of the five qualifying conditions are satisfied, overtime compensation is **Mandatory**. In such instances, check the Mandatory box in the *Type of Overtime* field and proceed with completing the Mandatory OT Exception justification. If the employee or conditions do not qualify for Mandatory OT, a Permissive OT Exemption may still be warranted.

Classifications for Mandatory OT Exception: Within the DMA, **only** the following supervisory classifications are subject to Mandatory OT Exception. If the employee for whom you are requesting overtime exception is **not** in one of the following classifications, **DO NOT** request Mandatory OT Exception.

- Building and Grounds Supervisors,
- Cadet Specialist Supervisors,
- Custodial Services Supervisors,
- Fire Crash Rescue Supervisors,
- Military Affairs Security Officer Supervisors,
- Office Management Supervisors.

Qualifying Conditions: If the position for which you are requesting Mandatory OT Exception is classified with one of the aforementioned titles, **all** of the following conditions must still be satisfied for the request to qualify for Mandatory OT Exception. All five boxes must be checked, with explanations provided for conditions #3 & #5. Following is an example of a qualifying, Mandatory OT Exception.

- 1. The supervisor's position is assigned to pay range 81-04 or a counterpart pay range in a different schedule or lower.
- 2. The supervisor is **directed** to work hours **in addition to** his/her normal work hours and such additional work hours result in overtime hours;
- 3. The **purpose** of the additional work hours is **to supervise employees** who also are **directed to work additional hours**;
Names of Employees: Example - Facilities personnel Olson, Johnson, Smith, and Jones were directed to work additional hours on the subject day and times. [Note – this will be validated by payroll.]
- 4. The additional work hours, **of the employees supervised**, generate overtime compensation for that workweek or work period. [Note – this will be validated by payroll.]
- 5. The additional work hours of **both the supervisor and employees supervised** are generated by the **same cause or situation**.
Describe the cause or situation: Example - The aforementioned employees, and the Building and Grounds Supervisor for whom mandatory **OT** is required, were directed to work overtime on the day and times indicated due to a major winter storm to plow snow and address issues related to resulting power outages.