

DEPARTMENT OF MILITARY AFFAIRS
STATE HUMAN RESOURCES
PRACTICE AND PROCEDURE MANUAL

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SUBJECT: Supplemental Pay for FLSA Exempt Employees

SECTION: Compensation

POLICY

Overtime and supplemental pay is to be held to a minimum consistent with the needs of the agency. Each supervisor must be good stewards of our taxpayer's dollars and be fiscally responsible. Supervisors must make every effort to utilize other available alternatives before assigning employees to work hours that will require such pay.

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 (The Adjutant General) or designee. If authorized, overtime compensation may be in the form of cash payment or compensatory time credits, as the employer elects.

SCOPE

The provisions of this policy are applicable to all FLSA exempt DMA employees except those in positions identified in Wisconsin Statute 20.923 subs.(4), (7), and (8).

DEFINITIONS

Compensatory Time Credits: Paid time off the job which is earned and accrued by an employee in lieu of cash payment for overtime. Limited Term Employees are not eligible to accrue Compensatory Time Credits.

Data Processing Unit Code (DP): A code designating the data processing unit to which a classification belongs. A code whose primary purpose is to identify to which group a classification is affiliated for purposes of coverage under the state employment relations act. The DP unit code also is used to determine coverage under the Compensation Plan's overtime provisions. The DP Unit code indicates whether a classification is considered part of a potential or existing bargaining unit and whether it is considered professional or non-professional. Classifications DP Unit codes can be found at the Alphabetical Listing of Classifications (Alpha List) located at https://dpm.wi.gov/Pages/HR_Admin/Class-and-Comp-HR-Admin.aspx.

Fair Labor Standards Act (FLSA): FLSA is a federal law through the Department of Labor (DOL) which establishes minimum wage, overtime pay eligibility, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state and local governments.

Full Time Equivalence (FTE): The amount of hours budgeted for a position. A position budgeted for 80 hours in a bi-weekly pay period would be 1 FTE; a position budgeted for 40 hours in a bi-weekly pay period would be .5 FTE.

Holiday Premium: Payment is mandatory for qualifying hours worked by all FLSA exempt employees identified in Scope above, except employees in the classification of Fire/Crash Rescue Supervisor. Holiday premium is paid at the rate of time and one-half.

Night Differential: Payment is at the discretion of the appointing authority for qualifying hours worked by all FLSA exempt employees, except employees identified in Scope above, or in the classification of Fire/Crash Rescue Supervisor. Night differential can be paid at the rate of forty-five cents (\$0.45) per hour. Qualifying hours are hours worked between the hours of 6:00 pm and 6:00 am.

Nonstandard Work Period: A regularly recurring period of 336 hours in the form of 14 consecutive 24-hour periods, which begins on a day of the week and time established by the appointing authority. Employees assigned a nonstandard work period are those employees who do not work a fixed schedule of 40 hours in both weeks of the pay period.

Nursing Responsibility Differential: Payment is mandatory for qualifying hours worked by all FLSA exempt employees assigned to Schedule 11 providing professional nursing care. Nursing responsibility is paid at the rate of \$1.40 per hour. Qualifying hours are hours worked 6:00 pm and 6:00 am.

Overtime: Payment is at the discretion of the appointing authority for hours worked in excess of 80 per pay period by FLSA exempt employees identified in Scope above, except employees in the classification of Fire/Crash Rescue Supervisor. Payment is at the discretion of the appointing authority for hours worked in excess of 106 hours per pay period by FLSA exempt employees in the classification of Fire/Crash Rescue Supervisor. There are limited circumstances when Supervisors must receive overtime. FLSA exempt employees identified in Scope above, who work overtime may receive payment up to time and one-half the number of overtime hours in cash or compensatory time credits. Payment of cash or awarding compensatory time is at the discretion of the appointment authority.

Overtime During a Declared State or Federal Emergency. For a Governor-declared emergency under Wis. Stat. § 323.10, and a Presidential-declared emergency under 42 USC 5170 *et seq.*, all FLSA exempt employees, except project employees, who are required to respond to state and federal declared emergencies will be granted overtime as appropriate to perform their assigned duties. Overtime will be granted in the form of compensatory time during a declared state and federal emergency. Any employee sent by an agency out-of-state to respond to emergencies under an interstate compact, an Emergency Management Assistance Compact (EMAC), or other equivalent mutual aid agreement, may be paid up to 1.5 times the employee's regular rate of pay. In accordance with the State of Wisconsin Compensation Plan for 2017-2019, Section A – 4.03(3)(b), any compensatory time not used by October 31, will be paid in cash in the following November at the employee's current regular pay rate.

Request for FLSA Exempt Overtime Form: DMA Form 39

Standby Pay: Payment is at the discretion of the appointing authority for qualifying hours worked by all FLSA exempt employees, except employees identified in Scope above, or for FLSA exempt Limited Term Employees, when the appointing authority requires an employee to be available for work and be able to report to work in less than one hour. Standby pay is paid at the rate of \$2.25 per hour.

Weekend Differential: Payment is at the discretion of the appointing authority for qualifying hours worked by all FLSA exempt employees, except employees identified in Scope above, or in the classification of Fire/Crash Rescue Supervisor. Weekend differential can be paid at the rate of sixty cents (\$0.60) per hour. Qualifying hours are hours worked between Saturday at 12:00:01 am and Sunday at 11:59:59 pm.

AUTHORITY AND REFERENCE

- Wisconsin Compensation Plan, Section A-4.00
- Wisconsin Human Resources Handbook, Chapter 520
- Alphabetical Listing of Classifications

PRACTICE

As part of ensuring fiscal responsibility in state government, supervisors and employees of the Department of Military Affairs must ensure supplemental pay is to be held to a minimum and abide by the practices listed below.

1. Employees are not authorized to work holidays unless specifically directed by their supervisor as job requirements dictate due to incurring **Holiday Premium** pay.
2. Employees are not authorized to work hours that could qualify for **Night Differential** unless specifically directed by their supervisor as job requirements dictate due to incurring **Night Differential** pay. Supervisors in the classification of Cadet Specialist Supervisor or Military Affairs Security Officer Supervisor, who are normally scheduled to work during hours that incur **Night Differential**, will continue to be paid those differentials.
3. The general policy regarding payment of **Overtime** worked by FLSA exempt employees is that salaries paid to employees are generally intended to be compensation for the total responsibilities of the position regardless of the number of hours worked. However, circumstances may exist where time off or cash payment for overtime hours is appropriate. Time off or cash payment authorization *may* be granted to employees at the discretion of the appointing authority (The Adjutant General) or designee except where additional compensation is required. If the duties resulting in overtime are not described in the employee's PD, then that employee may possibly be paid overtime, if approved by The Adjutant General or designee. If the duties performed resulting in overtime are described in the employee's PD, then the employee won't be paid any amount of money for those overtime hours. The rate at which the overtime may be paid is determined by DP Codes. Reference Section A-4.03 (2)(a) of Wisconsin Compensation Plan.
4. Employees, except employees in the classification of Fire/Crash Rescue Supervisor, will be paid the number of hours recorded per pay period, up to their FTE, and will not be paid **overtime** unless:
 - a. A Request for FLSA exempt overtime is approved by the appointing authority (The Adjutant General) or designee. There will be no blanket overtime approvals, each overtime request will be considered on a case-by-case basis. Requesting supervisor **MUST** submit a request at a minimum 1 week in advance (except for emergencies: those unforeseen emergency situations that include weather-related emergencies or other natural disasters, HVAC, and information technology needs that, if not immediately addressed, will significantly impair operability.) Requests will be handled in an expeditious manner.

- 1) All requests must use the Request for FLSA Exempt Overtime Form, DMA Form 39.
 - a) All requests must be electronically emailed to the SHR director; in those instances where an immediate response is requested, a telephone call followed up by email will suffice.
 - b) All incomplete requests will be rejected.
 - c) All requests without approval signature by all parties will be rejected.
 - d) All requests require a start and end date.
 - e) All requests will be reviewed and approved/denied based on several factors including:
 - i. For a Governor-declared emergency and a Presidential-declared emergency, all FLSA exempt employees, except project employees, who are required to respond to declared emergencies will be granted overtime as appropriate to perform their assigned duties. Overtime will be granted in the form of compensatory time during a declared state and federal emergency.
 - ii. The number of additional hours of scheduled work required by the employer on a frequent and recurring basis (i.e., if only a few overtime hours are worked on an occasional basis, additional compensation should not normally be granted).
 - iii. The standards or expectations of the occupational area (i.e., in some occupations it is customary to work overtime hours without additional payment).
 - iv. The status of additional compensation for overtime hours paid to subordinates or comparable employees (i.e., the employee is supervising staff earning additional compensation for overtime hours, or the employee is working under similar conditions with employees comparable to employees in the category who are earning additional compensation for overtime hours).
 - v. The option of a **Nonstandard Work Period** would “unduly disrupt” the operations of the Agency. **Example 1:** *Employee is required to respond to a request within a suspense time of 24 hours. Employee works additional 4 hours to meet suspense. Agency would be “unduly disrupted” by allowing employee to leave a scheduled shift earlier than normal, later in the work period.*
 - vi. Only qualifying overtime hours “worked” in a calendar week will be considered for approval. **Example:** *Employee records 60 hours in a calendar week as 52 hours worked, and 8 hours sick leave. Only 12 hours will be qualifying overtime being considered for FLSA exempt overtime approval, rather than 20 hours.*
 - vii. Upon review by SHR Director, overtime claimed that was not pre-approved or due to a known and communicated emergency, will be removed from the timesheet and will not be paid.
 - viii. All requests approved after time-sensitive payroll processing deadlines, will be honored and the affected employees will be retro-actively paid.
 - ix. If overtime is paid and later found to be paid in error, the employee will reimburse the State for any of the unapproved pay.
5. Supervisors will be paid the number of hours recorded per pay period, up to their FTE, and must be paid **overtime** if all of the following conditions apply:
 - a. The supervisor's position is assigned to pay range 81-04 or a counterpart pay range in a different schedule or lower (*); or, the supervisor's position is allocated to one of the following classifications: Engineering Specialist Supervisor or Engineering Specialist-Transportation Supervisor;
 - 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.

(*) Supervisors at DMA included in these assignments are: Building and Grounds Supervisors, Cadet Specialist Supervisors, Custodial Services Supervisors, Fire/Crash Rescue Supervisors, Military Affairs Security Officer Supervisors.

6. Supervisors who require their employees to be available for work which entitles the employee for **Standby pay**, will annotate those employees on the WebEOC duty officer schedule for WEM. For all others, supervisors must submit a request in email or memo format to the State Human Resources Director at the beginning of each month. If any changes occur, the supervisor must submit those changes immediately or annotate on WebEOC. Below are **Standby pay** situations that may occur:
 - a. **Standby pay** is not required. It is at the discretion of the appointing authority.
 - b. If approved, supervisors must verify standby pay against the duty officer schedule BEFORE approving **Standby pay**.
 - c. **Standby pay** will not be authorized during any time the employee is being compensated for hours worked. This includes any type of paid leave status (except an observed holiday, see d. below).
 - d. **Standby pay** will not be authorized for an employee who calls in sick for their shift, or goes home sick from their shift due to their own illness. The employee also is not authorized for **Standby pay** for 24 hours following their illness.
 - e. **Standby pay** is authorized before and/or after an employee's shift if the employee uses leave to cover an absence for a prescheduled medical appointment or family member's illness. **Example:** *Employee has prescheduled medical appointment at 3:00 pm. Employee uses Sick leave from 3:00 pm to 5:00 pm, which completes their shift. The appointing authority requires the employee to be available for work and be able to report to work in less than one hour, during the hours of 5:00 pm to 7:00 am the following day. The employee is authorized for **Standby pay**.*
 - f. When **Standby pay** is required on an observed legal holiday, hours reported on the timesheet will not exceed 32 hours on that day. **Example:** *An employee is on standby on a legal holiday and will be compensated for 8 hours of holiday leave. This employee will receive **Standby pay** for 24 hours in addition to a maximum of 8 hours of holiday leave pay; the total amount compensated on this day would be 32 hour.*
7. Employees are not authorized to work hours that could qualify for **Weekend Differential** unless specifically directed by their supervisor as job requirements dictate due to incurring **Weekend Differential** pay. Supervisors in the classification of Cadet Specialist Supervisor or Military Affairs Security Officer Supervisor, who are normally scheduled to work during hours that incur **Weekend Differential**, will continue to be paid those differentials.
8. State Human Resources will regularly review supplemental pay and may require further justification on approval/usage of these pay types.

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

Employee's Name:	Civil Service Classification:
Work Location:	Type of Overtime: <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
Type of Compensation: <input type="checkbox"/> Cash <input type="checkbox"/> Comp Time Weekend/Night Differential Authorized?: <input type="checkbox"/> Yes <input type="checkbox"/> No Maximum Number of Hours Requested:	Additional Hours Worked Outside of Schedule: Start Date: End Date: Start Time: End Time: <i>If more than one day, use space below.</i>
INSTRUCTIONS: Please reference DMA P&P Bulletin No. 1.600 for information regarding policy and procedures for requesting overtime exception for the FLSA Exempt employee. Except for emergency situations, requests must be submitted to the SHR Director at least <u>TWO weeks in advance of the anticipated overtime need</u> . Fax to (608) 242-3168 or email to DMASHRFeedback@wisconsin.gov	
JUSTIFICATION FOR OVERTIME EXCEPTION: *Requests for Mandatory Overtime must <u>itemize and address</u> the five qualifying conditions here. Refer to back side of this form.	
REASONS FOR DENIAL:	
Supervisor Requesting Action:	Print: Sign: Date:
2 nd Line Supervisor: <input type="checkbox"/> Approval <input type="checkbox"/> Disapproval	Print: Sign: Date:
Wing/Base Commander, Division Administrator, Director Action: <input type="checkbox"/> Approval <input type="checkbox"/> Disapproval	Print: Sign: Date:
Director of State Budget and Finance, Action: Funding: <input type="checkbox"/> Yes <input type="checkbox"/> No	Print: Sign: Date:
Director of State Human Resources, Action: <input type="checkbox"/> Approval <input type="checkbox"/> Disapproval	Print: Sign: Date:
The Adjutant General, Action: <input type="checkbox"/> Approval <input type="checkbox"/> Disapproval	Print: Sign: Date:

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

MANDATORY OVERTIME EXCEPTIONS: There are limited circumstances when certain supervisory employees must receive overtime compensation **subject to specific, qualifying conditions**. Within the DMA, only the following supervisory classifications are subject to Mandatory Overtime Exception.

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

Qualifying Conditions: To qualify for Mandatory Overtime Exception, all of the following conditions must be satisfied.

- The supervisor's position is assigned to pay range 81-04 or a counterpart pay range in a different schedule or lower.
- The supervisor is directed to work hours in addition to his/her normal work hours and such additional work hours result in overtime hours;
- The purpose of the additional work hours is to supervise employees who also are directed to work additional hours;
- The additional work hours, of the employees supervised, generate overtime compensation for that workweek or work period; and
- The additional work hours of both the supervisor and employees supervised are generated by the same cause or situation.

Instructions: If all of these conditions are met, check the Mandatory box in the "Type of Overtime" field. Provide details specific to each of the aforementioned qualifying conditions in the request. If all of these conditions are not met, do not submit with the Mandatory box checked. Consideration may still be given to granting Permissive overtime exception and the Permissive box should be checked.