



United States Department of the Interior

BUREAU OF INDIAN EDUCATION
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Memorandum

To: Bureau of Indian Education Director, Deputy Director, Division Chiefs, Education Line Officers, School Principals, School Administrators and Presidents

From: Human Resources Officer, Bureau of Indian Education *Kay Hays*

Through: Interim Director, Bureau of Indian Education *Kevin Skenevore*

Subject: Overtime and Compensatory Time Policies and Procedures for the Bureau of Indian Education

The attached Policy and Procedures Memorandum is being issued to provide guidance for requesting, approving, accruing and recording of overtime and compensatory time by BIE employees, and is effective immediately. This policy Memorandum and attachments will be available on the Human Resources website: www.oiephr.bia.edu.

Specific questions regarding overtime and compensatory time should be directed to your servicing Employee and Labor Relations Specialist in the Human Resources Office.

Enclosure

Bureau of Indian Education Policy Memorandum

Overtime and Compensatory Time Policies and Procedures for the Bureau of Indian Education

Effective date: August 27, 2009

Expiration date: When superseded or rescinded in writing

Purpose and Background: Overtime and compensatory time use and accrual policies and procedures for Bureau of Indian Education employees.

References: 5 USC 5541 et seq, 5 CFR part 550, 5 CFR part 551, 29 USC 203(e)(2), Department of the Interior Personnel Management Letter No. 88-5 (550), 28 IAM – H, Collective Bargaining Agreement, 62 BIAM 11

This document provides guidance on Federal and Department of the Interior (DOI) regulations for the reporting, use, approval and compensation of overtime and/or compensatory time worked by employees within the Bureau of Indian Education (BIE). Compensation will be made either by monetary payment or equivalent time off (compensatory time), depending on the employee's classification as exempt or non-exempt under the Fair Labor Standards Act (FLSA or the Act).

Summary of Overtime Pay Provisions

Overtime compensation is authorized and paid under 5 U.S.C. § 5542 for an exempt employee and under the FLSA for a non-exempt employee. Under either authority, payment may be made to any full-time or part-time employee for the performance of overtime work. Overtime hours are all hours in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek during which work is performed by an employee. The administrative workweek begins on Sunday and ends the following Saturday.

An employee who is non-exempt is covered by the FLSA in accordance with 5 CFR § 551. A non-exempt employee is entitled to overtime pay for hours worked in excess of 8 hours in a day or 40 hours in a week which management approves OR suffers or permits work to be performed.¹

An employee who is exempt is not covered by the FLSA in accordance with 5 CFR § 551.

The FLSA designation is found in block 35 "FLSA Category" of the official SF-50 Notification of Personnel Action. If the letter is "N" (non-exempt), the employee is covered by the Act; if the letter is "E" the employee is exempt from the provisions of the FLSA.

¹ "Suffered or Permitted Work" means any work performed by a non-exempt employee for the benefit of an agency outside of his/her tour of duty, *whether requested or not*, when the employee's supervisor knows, or has reason to believe that the work is being performed *and* has an opportunity to prevent the work from being performed. When the supervisor is aware that an employee is performing work outside of his/her scheduled tour of duty and does nothing to prevent it from occurring, he/she has suffered or permitted the employee to work. As a result, the employee is entitled to overtime compensation since suffered or permitted work constitutes hours of work under the FLSA.

Overtime Pay/Compensatory Time

Prior to working overtime an employee must:

Request in writing to work overtime

Request must be approved in writing by Supervisor using the form contained in Appendix A.

Or the supervisor may *assign* work to an employee to be performed in excess of 8 hours in a day or 40 hours in a week. The supervisor shall authorize the performance of overtime work in writing using the form contained in Appendix A. This is true whether or not an employee has requested overtime pay or compensatory time for the work performed.

All such work shall be recorded and reported in the official time and attendance system (Quicktime), following established instructions and procedures.

Compensation of Overtime Pay

Exempt Employees

Basic pay rate does not exceed GS-10, Step 1

Overtime rate is 1 ½ times the basic pay rate

Basic pay rate exceeds GS-10, Step 1

Overtime rate is equal to the greater of:

1 ½ times the applicable minimum hourly rate of basic pay for GS-10, Step 1

Or

the employee's hourly rate of basic pay.

Non-exempt Employees

Overtime rate is equal to 1 ½ times the applicable minimum hourly rate of basic pay.

Compensatory Time

- Must be requested in writing by the employee prior to working.
- Must be approved by supervisor in writing prior to working.
- Compensatory time off earned must be used within twenty six pay periods from the date the overtime work is performed. For contract education employees, compensatory time must be used within the same contract year in which it is earned.
- Compensatory time is earned in an amount equivalent to the hours worked.

Bargaining unit contract education employees

The collective Bargaining Agreements provides as follows:

Where an education employee has accrued compensatory time, the employee will be granted such compensatory time before furlough, or in the event the accrued compensatory time cannot be taken before furlough, may carry such compensatory time for a period of up to one year from the date such compensatory time was earned.

Nonexempt Employees:

If overtime pay is based on FLSA provisions, overtime must be paid unless the employee requests compensatory time off in lieu of overtime pay.

If compensatory time is not taken within the time provided for its use (see above), employee will be paid at the overtime rate in effect at the time the work was performed.

Exempt Employees

If basic pay rate is equal to or less than GS-10, Step 1:

Overtime pay equal to 1 ½ times the employee's hourly regular rate of pay.

OR

May request compensatory time off in lieu of overtime pay.

Compensatory time must be used within twenty six pay periods for Title 5 employees or the compensatory time will be lost and overtime will not be paid. (Unless failure to use the compensatory time is due to a work-related exigency beyond the employee's control.) For contract education employees, the compensatory time must be used within the contract year in which it is earned. If an exigency of the service prevents the usage of the compensatory time, overtime may be paid.

Supervisors are responsible for:

1. Ensuring that effective and efficient planning has been performed so that required overtime is minimal.
2. Approving overtime and compensatory time within their level of authority and recommending higher level approval when warranted.
3. Ensuring that special care is taken to see that employees approved for overtime work make their maximum contribution during regular working hours.
4. Ensuring that overtime work is for completion of a specific project or task and not an extension of daily work.
5. Monitoring employee compensatory time balances to ensure employees schedule the time as soon as possible after the time is earned.
6. Submitting monthly reports of overtime costs to Education Program Administrator.
7. Obtaining approval from the Bureau head prior to approving overtime pay in excess of 600 hours in a calendar year.

Overtime questions concerning specific situations should be directed to the Employee/Labor Relations Section of the Human Resources office.

Frequently asked questions:

Question 1:

May a non-exempt employee be required to request compensatory time for hours overtime hours worked?

Answer:

No. Both the regulations and the collective bargaining agreement allow overtime work to be compensated as compensatory time *only at the election of the employee*. Unless such employee specifically requests compensatory time, s/he is entitled to payment at the appropriate overtime rate.

Question 2:

If I find out that a subordinate non-exempt employee worked overtime during the last weekend for 8 hours on Sunday without my knowledge, am I obligated to pay the employee overtime for that work since I did not approve them working those hours? If so, are they entitled to be paid both overtime and Sunday premium for the hours worked? May I discipline the employee for not obtaining prior approval to work overtime?

Answer:

Yes, you are obligated to pay the employee for the hours worked. While the overtime work should have been requested and approved by you using the overtime/compensatory time request and approval form in Appendix A, you are obligated to pay overtime for the hours worked. If the employee has been advised of the proper procedure for requesting to work overtime and has not followed those procedures, they may be subject to disciplinary action, if warranted.

Question 3:

What if the facts are the same as in question # 2 above except the employee is exempt?

Answer:

5 CFR 550.111(a)(1) requires that for overtime to be paid, the hours of work must be officially ordered and approved. Since the work was performed without appropriate approval, payment is not required.

Question 4:

The school's budget will not support the payment of overtime at this time but I need two non-exempt employees to work 16 hours of additional time this week to complete a report, may I require them to work the hours and compensate them with compensatory time?

Answer:

No. Despite the budgetary constraints, non-exempt employees are entitled to overtime pay unless they request compensatory time.

Question 5:

If we negotiate a new collective bargaining agreement with the Union will I be permitted to require non-exempt employees in the bargaining unit to take compensatory time instead of overtime?

Answer:

No. A collective bargaining agreement cannot waive rights employees have pursuant to the FLSA.

Question 6:

May an individual who is a full-time non-exempt bus driver volunteer to drive the basketball team to away games on the school bus outside his scheduled work hours? If so, may he be compensated with a stipend?

Answer:

An individual who is a full-time bus driver provides the service of transporting students. Driving a school bus constitutes the same, identical or similar service within the meaning of 29 CFR § 553.103, regardless of the characterization of the passengers as students or student athletes and of whether the transportation is to and from school or school authorized activities. Thus, this individual driver would not qualify as a *volunteer* under the FLSA and payment by a stipend would not be appropriate. Overtime or compensatory time would be the appropriate method of payment to this employee for any hours worked in excess of 8 hours per day or 40 per week.

The FLSA indicates that individuals are volunteers, not employees of a public agency, when they meet the following criteria:

- A. Perform hours of service for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered. The statute clarifies that a volunteer performing such service can either receive no compensation or be paid expenses, reasonable benefits or a nominal fee to perform such services:
- B. Offer their services freely and without coercion, direct or implied, from the employer;
- C. Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer. In other words, individuals can qualify as volunteers if they either volunteer for different agencies or perform different services than they are employed to perform.

Question 7:

A non-exempt custodian has a schedule of 6:00 am – 2:30 pm, Monday thru Friday. He is required to work 8 hours on a Saturday in a week during which a holiday also occurs. The custodian is not scheduled to work on the holiday. Are the hours worked on the Saturday considered overtime hours?

Answer:

Yes. Hours in a non-work paid status such as paid leave and holidays are considered hours of work.

Request/Authorization for Overtime/Compensatory Time

_____ Overtime

Pay Period: _____

_____ Compensatory Time

Requesting Office: _____

Employee Name: _____

Day and Date Work Performed	Total Requested Hours	Request Approved by Supervisor Initial/Date	Total Actual Hours	Actual In/Out Time	Employee <i>and</i> Supervisor Signature (certifying Actual OT/CT worked)
Sunday Date: _____					Emp _____ Supv _____
Monday Date: _____					Emp _____ Supv _____
Tuesday Date: _____					Emp _____ Supv _____
Wednesday Date: _____					Emp _____ Supv _____
Thursday Date: _____					Emp _____ Supv _____
Friday Date: _____					Emp _____ Supv _____
Saturday Date: _____					Emp _____ Supv _____

Justification: _____

Accomplishments: _____

Accounting Code: _____

Requested by: _____ Date: _____

Approved by: _____ Date: _____

Disapproved: _____ Date: _____