



**Office of Human Resources
Standard Operating Procedure
HR SOP #503**

Subject: Overtime Compensation for Emergency Response

Effective Date: December 16, 2019

Policy Statement:

The Department of Natural Resources will compensate employees in cash for overtime performed while deployed in response to an emergency declared by the Governor. Employees will be compensated for overtime earned in accordance with the Fair Labor Standards Act, State Personnel Board Rules, and Policy memorandum #7, *Rules, Regulations, and Procedures Governing Working Hours, the Payment of Overtime, and the Granting of Compensatory Time* published jointly by the Office of Planning and Budget (OPB) and Department of Administrative Services (DOAS).

Definitions:

Compensatory Time: Compensatory time is allotted to compensate an employee for time worked or total time accrued beyond the established maximum for the work period. There are three distinctly different types of compensatory time:

1. FLSA compensatory time is earned when a nonexempt employee physically works hours and minutes in excess of the maximum hours in the designated work period. To earn FLSA compensatory time, the hours and minutes must be physically worked. This compensatory time is earned at the rate of one and one-half times the hours and minutes physically worked over the maximum hours allowed for the work period. **NOTE:** Since time must be physically worked to earn FLSA compensatory time, it is not earned by the employee if paid leave, compensatory time off, or time off for a state holiday(s) causes the employee's work hours for the work period to exceed the work period maximum (typically 40).
2. State compensatory time for salaried exempt and nonexempt employees is earned when an employee's credited work hours and minutes, and observed State Holiday time total more than the scheduled number of hours in a work period. (e.g., An exempt or nonexempt employee who observes the 8 hour holiday (does not work on the holiday) works 34 hours in the holiday week. Thirty-four hours of work + 8 hours holiday = 42 hours in the work week. The employee earns 2 hours of State compensatory time.) State compensatory time is earned at the rate of one-for-one for hours/minutes that exceed the work period maximum. Exempt employees also earn state compensatory time for time physically worked in excess of the maximum in a work period.

3. Holiday Deferral (Holiday compensatory time) is earned when an eligible employee works for any hours and minutes on a day designated by the Governor as a state holiday or the holiday is the employee's regular day off. Holiday Deferral is earned at the rate of one-for-one for all time worked, up to 8 hours maximum per holiday.

Emergency: An emergency is whenever the Governor determines that the health and safety of employees, clients, or citizens would be placed at risk or whenever a natural disaster results in the Governor declaring a state of emergency.

Exempt Employees: Employees who are exempt from the FLSA minimum wage and overtime provisions. The job duties of exempt employees meet the tests for the Executive, Administrative, Professional, Computer, Highly Compensated or Other FLSA exemptions; therefore, are not entitled to overtime for time worked in excess of the maximum number of hours in a specified work period.

Essential Employee: Employees designated by the Commissioner or designee as essential to respond to a designated emergency.

Fair Labor Standards Act (FLSA): A United States law that establishes various labor regulations including minimum wage, overtime pay requirements, recordkeeping, and limitations on youth employment affecting employees in the private sector and in Federal, State, and local governments.

Federal Emergency Management Agency (FEMA): An agency of the United States Department of Homeland Security. The agency's primary purpose is to coordinate the response to a disaster that has occurred in the United States and that overwhelms the resources of local and state authorities.

Nonexempt Employees: Employees who are covered by the FLSA minimum wage, overtime and recordkeeping provisions. Nonexempt employees are those who do not meet the FLSA exemption tests, and must be compensated, either by compensatory time or money, for time physically worked in excess of the maximum number of hours (typically 40) in a specified work period.

Overtime: Monetary payments or FLSA compensatory time received by employees for any time physically worked beyond the maximum permitted hours for a designated work period under FLSA. Overtime is calculated at the rate of one and one-half the regular rate of pay (or time for FLSA compensatory time) for every one hour/minute worked beyond the maximum. Time worked beyond the maximum for the work period will be rounded up or down to the nearest five minutes. Nonexempt salaried employees will typically be provided FLSA compensatory time in lieu of cash overtime. Exempt employees are **not** eligible for consideration for overtime compensation except in extremely unusual circumstances, discussed in this SOP, and only with the approval of the Commissioner, or for EPD, the Director, or their designee. DNR typically pays cash overtime only to non-salaried employees and to essential salaried employees who incur overtime in response to an emergency declared by the Governor.

Procedure:

Emergency Declaration:

The Governor will issue an emergency declaration establishing the official beginning date of the emergency and will identify the ending date by rescinding the emergency declaration. The declaration will include the counties affected by the emergency. The beginning and ending dates as well as the counties identified in the emergency declaration will set the initial parameters for the payment of overtime to employees deployed in response to the emergency.

Identification of Affected Employees:

Designating the Division Emergency Overtime Tracking Coordinator:

The Division Human Resources Representative will be designated as the Emergency Response Overtime Tracking Coordinator. If an employee other than the Division Human Resources Representative is designated as the Emergency Response Overtime Tracking Coordinator the Division Director must notify the DNR HR Director within two weeks of the deployment of employees for the emergency. The Division HR Representative will track overtime incurred in response to an emergency, identify the anticipated length of the deployment, be aware of FEMA reimbursement to the Division, and communicate this information to the HR Director and other central office administrative staff, as necessary.

Designating Essential Employees:

The Commissioner of the Department of Natural Resources, or his/her designated Division Director, will identify employees who are essential to respond to the emergency. The essential employees must be below the level of Division Director and typically are nonexempt. These essential employees may be eligible for cash overtime pay for work performed while deployed in response to the emergency. Division Directors must provide the HR Director with an initial list of employees who have been deployed for the emergency three weeks after the emergency declaration and a final list within two weeks after the emergency response deployment has ended for that Division. This list must include the employee's name, Employee ID, FLSA status, Department Name, Department Number and the official job title. This first six columns of the *Emergency Response Overtime Record*, (Attachment #1) is to be used for this purpose.

Determining the Applicable Emergency Response Period:

Division Directors will periodically inform the Deputy Commissioner of the status of emergency response operations. Based on the discontinuation of the Governor's emergency declaration and the status of agency emergency response the Deputy Commissioner will determine the date range of the emergency that is applicable to each Division for purposes of awarding cash payment for overtime for emergency response.

Timekeeping for Essential Employees:

Limiting OT Incurred:

OPB memorandum directs agencies to keep overtime to a minimum during emergency response operations. Those managers responsible for deploying response teams are expected to use employee schedule adjustments to minimize accrual of FLSA Compensatory Time during emergency deployments.

Timesheets:

During the declared emergency, all employees who are deployed to the disaster area will record hours worked on department timesheets and complete any timekeeping documents required by the Federal Emergency Management Agency (FEMA). In the comments section or elsewhere on the timesheet, employees **must clearly indicate** the following information for each day that they are deployed:

- The number of hours worked;
- The job duties performed (e.g. Travel to deployment site, storm debris clean up, security patrols, distribution of emergency supplies, assisting evacuees, command post duties, etc.). Note: standby and preparation time will not be compensated with cash overtime;
- The primary county to which the employee was deployed each day and in which the duties were performed.
- The county in which the employee typically works.
- An indication that the overtime earned is due to an emergency response deployment.

Division Human Resources Representatives are responsible for review of timesheets to verify that they contain the required information listed above prior to forwarding the documents to the Office of Human Resources.

Exempt Employees Responding to the Emergency:

Exempt employees designated as essential employees during the emergency, who perform nonexempt work in response to the emergency, may be designated as nonexempt for the work week. The Office of Human Resources will determine which exempt employees will be designated as nonexempt for the work week based on the emergency response duties performed during the week. All hours that exceed scheduled hours for these nonexempt employees will be recorded as FLSA Compensatory Time. However, only the hours worked during deployment to the disaster zone will be eligible for a cash overtime payment.

Requesting FLSA Compensatory Time:

Within one month after the end of emergency response deployment, the Division HR Representative must submit the following to the Office of Human Resources for all employees who responded to the emergency and incurred overtime. All Documents must be submitted as a package and should correspond to the names reflected on the list of essential employees provided to the HR Director.

- The list of names provided by the Division Director to the HR Director.
- Timesheets containing all information listed above.
- Completed *FLSA Compensatory Time Reporting Forms*, Attachment 2 of HR SOP #501. Division HR Representatives will complete the form for nonexempt employees and **clearly indicate in the comments section that the FLSA Compensatory Time is for time worked in response to an emergency**. For exempt employees, HR Representatives must indicate the following in the comments/justification section of the *FLSA Compensatory Time Reporting Form*, and/or attachment: (e.g., *Employee is exempt; however, during the week of (dates) we request that the employee be designated as nonexempt because his/her duties included (duties as listed on timesheet) as a result of emergency (name assigned to the emergency)*). An essential nonexempt employee or an exempt employee, who is designated as nonexempt for a particular week due to the emergency, earns overtime in response to a declared emergency at a rate of 1.5 times their regular hourly rate for all hours physically worked in excess of the maximum number of hours specified for the work period (typically 40). Law Enforcement employees, who have been assigned a work period of 28 days, are entitled to FLSA compensatory time after physically working 171 hours.

NOTE: Once the FLSA Compensatory Time is entered into TeamWorks, the department requirement to pay overtime in a timely manner is satisfied. After reimbursement is requested and received by the Division from FEMA, employees who were awarded FLSA Compensatory time for time worked during the emergency deployment may be awarded cash in exchange for the applicable FLSA Compensatory Time balance. Employees who use their FLSA Compensatory Time between the time of the initial entry into TeamWorks and the cash payout will not be eligible for a cash payout.

Leave Entry:

The leave plan referred to in TeamWorks as Disaster Leave is used for a different purpose; however, in order to ease the administrative burden of tracking this compensatory time earned for emergency response, FLSA Compensatory Time that is earned from deployment to an emergency will be designated by the Office of Human Resources in the TeamWorks system as Disaster Leave. Employees may use this FLSA Compensatory Time (categorized as Disaster Leave) if they wish but once they have used this leave they are no longer eligible for cash payments. Leave keepers in the Divisions must not modify Disaster Leave balances for any employee. OHR will be responsible for establishing employee Disaster Leave plans, and making adjustments to the disaster leave balances as the employee earns and/or uses the leave. Note: Since Disaster leave balances in TeamWorks are reflective of FLSA Compensatory Time, HR Division representatives must ensure that the FLSA Compensatory Time balance + Disaster leave balance of any individual does not exceed the maximum of 240 hours for FLSA Compensatory Time (480 for law enforcement employees).

Award and Verification of FLSA Compensatory Time:

The Office of Human Resources will review the documents submitted and complete the remaining columns of the *Emergency Response Overtime Record*, (Attachment #1). Attachment

#1 will be forwarded to each Division HR Representative. Division HR Representatives will be required to verify the information on the attachment and notify OHR. Upon verification OHR will enter the FLSA Compensatory Time balances into the employee's record (as Disaster Leave).

Overtime Acknowledgement:

Once OHR and the HR Division Representative agree on the content of Attachment #1 the HR Division Representative will distribute the *Overtime Payment Acknowledgement Memo*, (Attachment #2) to each applicable employee. This memo requires each employee to acknowledge;

- The OT hours earned.
- That they are eligible for cash payment for OT earned.
- The parameters associated with cash OT payments.
- Their payment choice regarding their OT hours.

Division HR Representatives must inform OHR of the individuals who choose to retain their FLSA Compensatory Time balance and forgo cash payments. Those who choose to forgo cash payments will have their OT entered as FLSA Compensatory Time and not Disaster Leave. HR Division Representatives must retain the Overtime Payment Acknowledgement Memos for three years.

Overtime Authorization:

Authorization to Pay Cash Overtime:

The Office of Planning and Budget (OPB) requires that funds for overtime payments must be covered by agencies' existing personal services budget or other funding resources. If agencies have extensive overtime payments and all resources have been exhausted, agencies may request additional funds through customary budget processes. The DNR Director of Administrative Services must obtain approval from OPB to pay overtime and will do so in accordance with the Office of Planning and Budget and Department of Administrative Services Policy Memorandum, *Rules, Regulations and Procedures Governing Working Hours, and the Payment of Overtime, and Granting of Compensatory Time*.

Reimbursement from FEMA:

DNR Divisions will seek reimbursement from FEMA for overtime expenses in response to emergencies shortly after the emergency deployments have ended. FEMA provides reimbursement for costs associated with emergencies to eligible state and local governments. FEMA will assist with funding for debris removal, emergency protective measures, and infrastructure restoration. To learn more about reimbursement procedures, Division Emergency Response Overtime Tracking Coordinators should review the FEMA Public Assistance handbook at the following intranet address: https://www.fema.gov/pdf/government/grant/pa/fema323_app_handbk.pdf.

Receipt of Funds:

Historically it is approximately 1 year or more between the time of the emergency and the reimbursement of funds by FEMA to all Divisions involved in the emergency response efforts. DNR central Accounting must have received reimbursement for personal services from FEMA for all Divisions prior to cash overtime payments being made to employees. The following notifications are required prior to cash payment to employees;

- The Division Human Resources Representative must determine if DNR Accounting has received reimbursement for personal services from FEMA and notify the Division Director.
- The Division Director must notify the HR Director that reimbursement for personal services from FEMA has been received and transferred to Accounting for disbursement.

Overtime Payment:

Cash OT Payment to Employees:

Once FEMA reimbursement is received the Division offices will be notified by OHR cash overtime payment will be made. Since it is likely that a significant time has elapsed since the HR Division Representative and OHR have agreed on the contents of Attachment #1, *Emergency Response Overtime Record*, OHR will review Attachment #1, determine if employees have terminated, used their FLSA Compensatory Time balances, etc. OHR will adjust Attachment #1 accordingly and send it to the Division for final verification. Once final verification is complete the Cash OT payments will be made.

Record Retention:

All cash overtime payment records must be maintained in the Office of Human Resources for 3 full years.

Attachments:

Attachment 1 - *Emergency Response Overtime Record*

Attachment 2 - *Overtime Payment Acknowledgement Memo*