

Financial Administration

**COMPENSATORY AND OVERTIME/HOLIDAY WORK BY CIVILIAN PERSONNEL**

**Impact on the New Manning System.** This memorandum does not contain information that affects the New Manning System.

**1. Purpose**

The purpose of this memorandum is to prescribe policies and procedures for authorizing or permitting overtime work, compensatory leave, or payment of overtime for civilian personnel assigned to HQ FORSCOM.

**2. Policies**

The following policies will govern the use of overtime:

a. HQ FORSCOM Civilian Overtime Policy:

(1) Civilian GS employees who are Fair Labor Standards Act (FLSA) "Exempt" and whose basic rate of pay exceeds that of a GS-10, Step 10, must be given compensatory time off in lieu of overtime pay for "irregular or occasional" overtime work. Supervisors must ensure that employees use this earned compensatory time within 26 pay periods to prevent automatic conversion to paid overtime. Any exceptions require prior approval of the Deputy Commanding General (DCG)/Chief of Staff.

(2) While FLSA "Non-exempt" employees and FLSA "Exempt" employees below the basic pay rate of a GS-10, Step 10, are entitled to overtime pay, use will be limited to mission essential tasks.

(3) Supervisors will encourage but may not mandate compensatory time off in lieu of pay for "regularly scheduled" overtime work. Overtime may become "regularly scheduled" when duly authorized in advance and a recurring and discernible pattern can be established. Directors will make every possible effort to keep "regularly scheduled" overtime to an absolute minimum. The issue of "regularly scheduled" overtime will be addressed at the Director/Assistant Director level in coordination with Deputy Chief of Staff, G1 Civilian Personnel Division (CPD). Findings to support that a determination of "regularly scheduled" overtime is necessary will be provided to the DCG/Chief of Staff for review and/or approval. Attempts made to avoid/minimize "regularly scheduled" overtime will be included in the justification.

b. Overtime worked in accordance with local policy will be in strict compliance with the 1974 Amendments to the Fair Labor Standards Act (FLSA) (Public Law 93-259).

(1) The basic responsibility of supervisors to effectively manage and control work within their area and to make efficient use of money and manpower resources toward this end is not altered by the FLSA. Supervisors will direct only when needed work is to be done as overtime.

(2) Management cannot accept the benefits of a non-exempt employee's work without compensating the employee.

(3) A non-exempt employee is entitled to overtime compensation (for hours worked in excess of 40 hours a week) for all work which management "suffers or permits" to be done. Under this concept, any work done before or after the established work hours or during the prescribed

lunch period by an employee covered by the overtime provision of the Act for the benefit of the office, whether requested or not, is working overtime if the supervisor knows of, or has reason to believe, it is being done. The Act provides that an employee can seek relief directly from the courts for overtime work for which the employee feels he/she has not been properly compensated.

(4) The FLSA exempts certain employees in executive, administrative, and professional positions. The determination of exempt/non-exempt status under the FLSA has been incorporated into the position classification process. Each staff agency will update a copy of the working Table and Distribution and Allowances (TDA), annotated to indicate each position as "exempt" or "non-exempt" and used to verify overtime pay entitlements. Changes in authorized positions or exempt/non-exempt status (documented on Standard Form 50, Notification of personnel Action) will be the basis for any revision to the working TDA.

c. Overtime will be restricted to the minimum necessary to meet workload requirements which cannot be done otherwise and will be consistent with operational safety, economy, and efficient management. The need for continuous use of overtime will be reduced or eliminated.

d. Work hours will be adjusted for the workload without using overtime, when practicable. However, a change in tour of duty for one or more employees will not be made just to avoid payment for overtime unless at least 2 weeks advance, written notice is given, and the new tour of duty will be for at least two pay periods. For example, if working on Saturday is continuously needed for continuity of operations, duty hours may be rearranged for employees involved for a specific number of hours on a set workday each week.

e. Compensatory Time.

(1) Except under certain conditions and at the request of the employee, the FLSA requires that a non-exempt employee be paid for hours worked over 40 hours a week at a rate not less than one and one-half times his/her regular rate.

(2) The non-exempt employee may request compensatory leave instead of overtime pay under certain conditions.

(a) There is no statutory provision under the FLSA for granting compensatory leave instead of overtime pay. However, FLSA does not deny a General Schedule (GS) employee's entitlement to request compensatory leave for irregular or occasional overtime work under Section 5543(a)(1) of Title 5, United States Code. There are certain circumstances when an employee who is non-exempt under FLSA may be granted compensatory leave as a substitute for overtime pay under Title 5.

(b) If a non-exempt employee earns his/her overtime pay entitlement in a given workweek solely under Title 5, all rules for requesting and granting compensatory leave apply without change. FLSA has no effect.

(c) If a non-exempt employee earns his/her overtime pay entitlement in a given workweek solely under FLSA, he/she must be paid for the overtime worked. No compensatory leave is allowed.

(d) Overtime pay entitlement under both FLSA and Title 5. If overtime pay entitlement in a given workweek is greater under FLSA, the employee must be paid, as in 2c, above. If overtime pay entitlement in a given workweek is equal or greater under Title 5, compensatory leave may be substituted for overtime pay.

(e) Compensatory leave will be equal to the time spent in overtime work. Compensatory leave, when appropriate, will be substituted at a rate of one hour compensatory leave for each hour spent in irregular or occasional overtime work.

(3) Exempt employees who work irregular or occasional overtime may be compensated with either compensatory time or overtime pay IAW the HQ FORSCOM Civilian Overtime Policy described in 2a above, provided such overtime has been officially ordered and approved by the appropriate approval authority. Except when immediate action is essential to protect human life or government property, approval to work overtime will be granted in advance. There is no entitlement for overtime/compensatory time for exempt employees unless the overtime has been officially ordered and approved. There is no regulatory basis for "unofficial" compensatory time.

(4) General and special staff agencies will set a time within which compensatory leave will be taken by the employee. Such leave will be granted within a reasonable period of time after the overtime work was performed, ordinarily during the same pay period. The limit for use of compensatory time off is the end of the 26<sup>th</sup> pay period after that in which the overtime was worked. Compensatory time off not used within this time limit is automatically paid as overtime. Compensatory time is also paid as overtime when an employee retires, resigns or transfers to another department or agency.

(5) In order to minimize the liability for compensatory time, managers and supervisors will insure that employees are scheduled to take compensatory leave within the limits stated in 2e(4), above. If conditions/workload prevent leave being taken within prescribed limits, FLSA non-exempt employees and FLSA exempt employees below the basic pay rate of a GS-10, Step 10 will be paid for such time based on the rate in effect at the time overtime was worked. As stated in 2a(1) above, conversion of compensatory time to paid overtime for FLSA exempt employees above the basic pay rate of a GS-10, Step 10, requires prior approval of the DCG/Chief of Staff.

### 3. Control

a. Directors or their designees may order or approve overtime IAW the policy described in 2a above. The fund certification officer will be given a list of all persons designated by Directors to approve overtime work. This list will be revised by the appropriate agency as changes occur. The HQ FORSCOM fund certification office is HQs

Operations Branch, Resource Integration Division, G8, AFRM-RI-O.

b. The Directors or their designees must authorize work which must be performed as overtime in advance, except in emergency situations, when immediate action without approval is essential to protect human life or Government property. Approval after the fact will be sought in these cases on the following normal workday.

c. HQ FORSCOM Form 128-E (Request and Authorization for Approval of Overtime, Compensatory Time and/or Holiday Work) will be used to request and authorize overtime work. As discussed in the previous subparagraph, except in emergency situations, this form must be submitted and approved in advance of the performance of the work. Unless an emergency situation existed, if the overtime work was not approved in advance, the work in question shall not be deemed authorized overtime, and neither overtime payment nor compensatory time should be given. HQ FORSCOM Form 128-E is available in electronic format in FormFlow. Be sure to include employee name, dates during which the overtime/holiday/compensatory hours will be worked and estimate of hours. Justification will include the following information:

(1) The specific purpose for which work for compensatory leave or overtime/holiday pay is required.

(2) The situation which will exist if work is not approved for payment.

d. The HQ FORSCOM Civilian Overtime Policy currently in effect and centralized management of civilian pay execution eliminate the need for certification of fund availability prior to work for compensatory leave or overtime/holiday pay. The only exception is during the month of September each year when certification of fund availability is required in accordance with the established policies and procedures for performing fiscal year-end closeout. At this time, you must obtain fund certification of any requests for overtime (HQ FORSCOM Form 128-E) from HQs Operations Branch, Resource Integration Division, G8, prior to any hours being worked.

e. After the overtime/holiday/compensatory hours are worked, the requesting/approving office will complete the columns on HQ FORSCOM Form 128-E for actual hours worked and total cost. Provide a copy of the completed original to HQs Operations Branch, Resource Integration Division, G8. The original of the completed form must remain in the requesting activity's files for audit purposes.

### 4. Surveillance

Directors will ---

a. Set firm procedures for controlling overtime and keep accurate records of the hours worked by their non-exempt employees.

b. Insure that overtime work is not done by employees non-exempt from the provisions of the FLSA, except when payment for such overtime is intended.

c. Evaluate justification.

d. Determine validity of requirements.

e. Determine that approval authority is assigned to the proper organizational level and that such authority has not been redelegated to a lower position.

f. Schedule annual leave during slack work periods.

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g. Review compensatory time reports, distributed to each directorate/staff agency by HQs Operations Branch biweekly, to insure that employees with compensatory leave to be taken are scheduled to take the time off. The Compensatory Time Aging Report identifies compensatory time scheduled to convert to paid overtime five pay periods in advance.

h. Continuously review requirements for overtime. The following are some situations to be investigated:

(1) Recurring requests for overtime in a functional area which may indicate staffing problems or inefficient operations.

(2) Employees working a scheduled 40 hours or less work week who have been paid for 30 hours or more overtime during three consecutive pay periods.

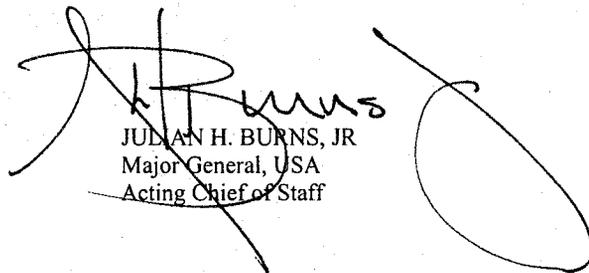
(3) Recurring overtime performed by employees occupying high grade/supervisory positions.

(4) Recurring overtime payments made to employees whether exempt or non-exempt under the provisions of the FLSA.

(AFRM-RI-O)

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