

Overtime



District Personnel Instruction No. 11-88

Effective Date	Expiration Date	Related DPM Chapters
November 23, 2016	Retain Until Superseded	12

i **NOTE:** This instruction supersedes DPM Instruction No. 11B-87, Overtime, dated November 21, 2016, due to the new Fair Labor Standards Act's rules being placed on hold. The purpose of this instruction is to update the salary threshold from \$47,476 to \$23,660 and highly compensated employees salary from \$134,004 to \$100,000.

Overview

The District strives to provide all employees compensation that is competitive with the regional market and in accordance with federal and District law. When public business necessitates overtime work, most employees are entitled to an overtime premium. This instruction outlines the District's overtime policy, addressing eligibility, compensation, and approval requirements.

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Overtime, Generally

Overtime refers to the amount of time an employee works beyond the normal scheduled tour of duty. In some cases, employees are either entitled to or eligible for additional compensation for overtime work. The additional compensation may be additional pay or time-off in the form of compensatory leave or exempt time-off.

Eligibility

Most employees must be provided overtime compensation under federal law. Employees exempt from the federal overtime requirements, may be eligible for discretionary overtime compensation. The following outlines when overtime is mandatory, when it is discretionary, and when it is not allowed.

1. **Mandated.** An employee must receive overtime compensation when he or she is:
 - a. *required or allowed to work more than 40 hours in a single workweek for typical schedules, or more than 80 hours in a pay period for a compressed work schedule; and*
 - b. *covered by the overtime provisions of the Fair Labor Standards Act (FLSA).*
2. **Discretionary.** An agency may provide overtime compensation to employees who are:
 - a. *approved or required, in writing, to work more than 80 hours in a pay period;*
 - b. *exempt from the overtime provisions of FLSA; and*
 - c. *serve at grade 7 or below in the Excepted Service, or at grade 14 or below in the Career, Educational, Legal, or Management Supervisory Service.*
3. **Ineligible.** The following employees are ineligible for overtime compensations:
 - a. *Executive Service employees;*
 - b. *Supervisory attorneys paid from the LX schedule;*
 - c. *Excepted Service employees at grade 8 or above; and*

Compensation

The amount of overtime compensation an employee receives will depend on whether the compensation is mandatory or discretionary.

Mandatory Compensation

Overtime pay for nonexempt employees is computed under FLSA. Under the FLSA, overtime pay is determined by multiplying the employee's "straight time rate of pay" by all overtime hours worked PLUS one-half of the employee's "hourly regular rate of pay" times all overtime worked. All overtime work that is ordered or approved or "suffered or permitted" must be compensated.

Employees entitled to overtime compensation may elect to receive compensatory time as accrued leave instead of pay. Such leave accrues at the rate of one and one-half times the number of overtime hours worked. (Compensatory time is discussed in more detail below.)

Discretionary Compensation

Overtime compensation for some exempt employees is computed either under FLSA or on an hour for hour basis, depending on the employee's grade. Before any overtime may be provided, it must be approved in advance of the overtime work, except when the overtime work is necessitated by an emergency.

Grades 12 and below (and the Excepted Service equivalent)

Employees in the Career, Educational, Legal (except those paid from the LX salary schedule), and Management Supervisory services at grades 12 and below, and employees in the Excepted Service at grades 7 and below, may receive overtime compensation computed under FLSA. In short, such employees may receive pay at one and one-half times the regular salary for overtime hours worked, or receive exempt time-off hours at one and one-half times the number of overtime hours worked. (Exempt time-off is discussed in more detail below.)

Grades 13 and 14 (and the Excepted Service equivalent)

Employees in the Career, Educational, Legal, and Management Supervisory services at grades 13 and 14, and employees in the Excepted Service at grade 7, may receive overtime compensation at their standard equivalent hourly rate for overtime work. Such employees may receive pay at their regular hourly rate times the number of overtime hours worked, or receive exempt time-off hours at one hour times the number overtime hours worked.

Compensatory Time

Rather than receiving overtime pay, an employee who is eligible to receive overtime compensation under the FLSA may *elect* the accrual of compensatory time. When authorized, compensatory time accrues at the rate of one and one-half times the number of overtime hours worked. Compensatory time has the following features:

- Accrues in 15 minute increments for actual overtime worked;
- Limited to 240 hours, except for emergency response and seasonal employees who may accrue up to 480 hours;

- May be used in one hour increments like annual leave, subject to the same limitations and requirements; and
- Employees receive a lump sum payment for unused compensatory time upon separation.

Exempt Time Off

Agency heads may authorize an overtime eligible FLSA-exempt employee to accrue “Exempt Time Off” rather than providing overtime pay. When authorized, Exempt Time Off accrues at an hour for hour basis, depending on the employee’s grade (see Discretionary Compensation above). Exempt Time Off has the following features:

- Accrues in 1 hour increments for actual overtime worked;
- Limited to 80 hours; except with approval from the personnel authority an employee may accrue up to 120 hours; and
- May be used in one hour increments like annual leave, and must be used by the end of the leave year following the leave year in which it is earned or it is forfeited.



NOTE: Exempt Time Off has no cash value. If an employee separates from District service he or she will not receive any payments for accrued Exempt Time Off.

Approval Required

Overtime work must be officially ordered and approved in advance. Agency heads, and their designees, are authorized to order and approve overtime work provided the agency has sufficient funding available.

Overtime should be approved using DCSF No. 11B-12, *Request for Authorization of Overtime Work*. (See Attachment 1) However, when responding to an immediate operational need, pre-approval may be memorialized in any written form, such as e-mail, and followed-up with the official overtime approval.

Completed overtime forms and any supporting documentation should be submitted to the employee’s timekeeper for processing.

Declared Emergencies, Holidays

Essential and emergency employees may be ordered to work, outside their regular tours of duty, during declared emergencies. These employees may be eligible to receive overtime pay for additional hours worked outside of their regular tour of duty¹.

Holidays are handled differently. An employee who is not regularly scheduled to work on a holiday, but is ordered to report to work on a holiday, is *entitled to overtime* for the hours worked.



ILLUSTRATION – An employee typically works 8:30 a.m. to 5 p.m. Monday through Friday. On Friday, there is a declared emergency that prompts an all day shutdown of the District government. Most government employees are ordered to remain at home, and will receive administrative closing pay. However, this employee has been designated as an “emergency employee” and is ordered to report for duty. The employee is ordered and approved to work from 8:30 a.m. to 9:00 p.m.

Total Compensation Hours for Friday Closure

Basic pay = 8 hours

Scheduled tour of 8:30 a.m. to 5 p.m.

Administrative Closing Pay = 8 hours

Pay covers scheduled shift of 8:30 a.m. to 5 p.m.

Compensable Overtime hours = 6 hours

Work performed beyond scheduled tour, 5:00 p.m. to 9:00 p.m. = 4 hours x 1.5 overtime rate = 6 hours. (**Note:** night differential does not apply because this work is outside the scheduled tour of duty.)

Total hourly equivalent of compensation due: 22 hours (8 + 8 + 6 hours).

ILLUSTRATION – An FLSA non-exempt employee typically works 8:30 a.m. to 5 p.m. Sunday through Thursday. The second Friday of the pay period is a holiday and the employee is ordered to work.

Total Compensation Hours for Friday Holiday

Holiday Pay = 8 hours

Pay covers scheduled shift of 8:30 a.m. to 5 p.m.

Compensable Overtime hours = 12 hours

Work performed 8:30 a.m. to 5:30 p.m. = 8 hours x 1.5 overtime rate = 12 hours.

Total hourly equivalent of compensation due: 20 hours (8 + 12 hours).

Exempt Employees

As noted above, unless exempt from the overtime provisions of FLSA, employees must receive overtime compensation when they are required or allowed to work more than 40 hours in a typical

¹ See DPM Instruction No. 11B-85 & 12-56, Severe Weather and Declared Emergencies, dated October 23, 2015.

workweek or 80 hours in a pay period under a compressed work schedule. The D.C. Department of Human Resources (DCHR) is responsible for classifying employees as either exempt or non-exempt under FLSA. DCHR classifies employees as “exempt” if they meet one of the following exemptions –

Administrative Exemption

A position will be designated as exempt under the administrative employee exemption if –

- The salary equals or exceeds \$23,660 annually;
- The position’s primary duty is the performance of office or non-manual work directly related to the management or general business operations of the agency or the agency’s customers; and
- The position’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

For more detailed information, please refer to the Department of Labor’s (DOL) [Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act \(FLSA\)](#).

Computer Exemption

A position will be designated as exempt under the computer employee exemption if –

- The salary equals or exceeds \$23,660 annually;
- The position is one of a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing duties consisting of:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - A combination of the aforementioned duties, the performance of which requires the same level of skills.

For more detailed information, please refer to the Department of Labor’s (DOL) [Fact Sheet #17E: Exemption for Employees in Computer-Related Occupations Under the Fair Labor Standards Act \(FLSA\)](#).

Executive Exemption

A position will be designated as exempt under the executive employee exemption if –

- The salary equals or exceeds \$23,660 annually;
- The position’s primary duty is managing the District, an agency, an office or another recognized subdivision of the District;

- The position customarily and regularly directs the work of at least two or more other full-time employees or their equivalent; and
- The position has the authority to hire or fire other employees, or the suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees is given significant weight.

For more detailed information, please refer to DOL's *Fact Sheet #17B: Exemption for Executive Employees Under the Fair Labor Standards Act (FLSA)*.

Professional Exemption

A position will be designated as exempt under the professional employee exemption if –

- The salary equals or exceeds \$23,660 annually;
- The position's primary duty is the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge is in a field of science or learning; and
- The advanced knowledge is customarily acquired by a prolonged course of specialized intellectual instruction.

For more detailed information, please refer to DOL's *Fact Sheet #17D: Exemption for Professional Employees Under the Fair Labor Standards Act (FLSA)*.

Highly Compensated Exemption

A position will be designated as exempt under the highly compensated employee exemption if –

- The salary equals or exceeds \$100,000;
- The position's primary duty includes performing office or non-manual work; and
- The position customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.



For example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

For more detailed information, please refer to DOL's *Fact Sheet #17H: Highly-Compensated Workers and the Part 541-Exemptions Under the Fair Labor Standards Act (FLSA)*.

Manager Liability and Other Penalties

The Fair Labor Standards Act contains a number of penalties for violations of overtime rules.

Willful Violations of FLSA

Any person, such as a manager or supervisor, who fails to adhere to the overtime standards established under FLSA, may be prosecuted criminally. The penalties for willful violations of FLSA include:

- A fine of up to \$10,000; and
- Imprisonment for up to 6 months.

District Liability

Whenever the District fails to comply with FLSA, the District is liable to the employee or employees affected. The District's liability includes:

- **Damages.** Employee are entitled to receive unpaid minimum wage and overtime compensation;
- **Liquidated Damages.** In addition to unpaid compensation, the employee is entitled to an equal amount the unpaid compensation. For example, if an employee is underpaid by \$100, the District would be liable to the employee for \$200 (\$100 unpaid compensation plus \$100 liquidated damages.)
- **Legal expenses.** An employee entitled to damages and liquidated damages may recover these liability through an action filed in either the District or Superior Courts of the District of Columbia. If the employee prevails, the District may be ordered to pay reasonable legal fees.

Legal

Authorities

1. 29 U.S.C. §§ 206 – 216.
2. D.C. Code § 1-612.01(b)(4).
3. 6B DCMR §§ 1132 – 1139; 1245 - 1248

Applicability

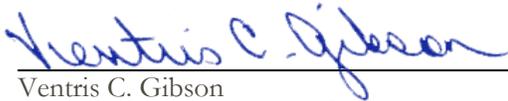
The provisions of this instruction apply to agencies under the Mayor's personnel authority except:

1. Sworn members of the Metropolitan Police Department;
2. Uniformed members of the Fire and Emergency Medical Services Department; and
3. Employees organized under a recognized collective bargaining agreement, to the extent the agreement differs from this instruction

Additional Information

For additional information concerning this instruction, please contact the D.C. Department of Human Resources, Policy and Compliance Administration, by calling (202) 442-9700 or by sending an e-mail to dchr.policy@dc.gov.

You may also visit https://www.dol.gov/whd/overtime_pay.htm for additional information on the overtime provisions of the Fair Labor Standards Act.



Ventris C. Gibson
Director

Attachments:

- DCSF No. 11B-12, Request for Authorization of Overtime Work (Rev. 10/16)
- Time Entry Examples

Attachment 1 – Overtime Approval Form

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OVERTIME REQUEST

DISTRICT OF COLUMBIA GOVERNMENT REQUEST FOR AUTHORIZATION OF OVERTIME WORK

Employee Name: Enter Employee Name

FLSA Status Code: Select FLSA Code

Position Title: Enter Position Title

Grade/Step: Enter Grade/Step

Date	Start Time	End Time	Total Hours	Type of Time*
Select Date	Enter Start Time	Enter End Time	Enter OT Hours	Select Type
Select Date	Enter Start Time	Enter End Time	Enter OT Hours	Select Type
Select Date	Enter Start Time	Enter End Time	Enter OT Hours	Select Type
Select Date	Enter Start Time	Enter End Time	Enter OT Hours	Select Type
Select Date	Enter Start Time	Enter End Time	Enter OT Hours	Select Type
Select Date	Enter Start Time	Enter End Time	Enter OT Hours	Select Type
Select Date	Enter Start Time	Enter End Time	Enter OT Hours	Select Type
Select Date	Enter Start Time	Enter End Time	Enter OT Hours	Select Type

Paid FLSA-Overtime=Overtime for Non-Exempt Employees; **Paid OT**= Overtime for Exempt Employees; **Comp Time**=Compensatory Time for Non-Exempt Employees; ***ETO**= Exempt Time Off.

Use the space below to describe the nature of work and explain why it cannot be accomplished during work hours:

Enter Explanation

APPROVAL

Supervisor/Manager/Associate Director (Designee)

Date

Agency Director (Designee)

Date

DCSF No. 11B-12 (10/16)

Attachment 2 – Time Entry and Overtime Reporting Examples

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Time Entry Example

For non-union, non-exempt employees, the hours should be posted on the timesheet as follows (Note: overtime hours are posted as Regular).

Workgroup Ch 11 Non-Union Non-Exempt

Reported Hours: 88.00 Hours Scheduled Hours: 0.00 Hours

From Sunday 01/24/2016 to Saturday 02/06/2016

Timesheet Overrides

Sun 1/24	Mon 1/25	Tue 1/26	Wed 1/27	Thu 1/28	Fri 1/29	Sat 1/30	Sun 1/31	Mon 2/1	Tue 2/2	Wed 2/3	Thu 2/4	Fri 2/5	Sat 2/6	Total	Time Reporting Code
	8.00	8.00	8.00	8.00	8.00	8.00			8.00	8.00	8.00	8.00	8.00	88.00	Regular Pay - REG

Save for Later Submit

The Workgroup determines how overtime should be report

Time Entry Example

For union employees, the hours should be posted on the timesheet as follows (Note: overtime hours are posted as Regular).

Workgroup COMP 1&2 Union Schedule Standard

Reported Hours: 86.00 Hours Scheduled Hours: 0.00 Hours

From Sunday 01/24/2016 to Saturday 02/06/2016

Timesheet Overrides

Sun 1/24	Mon 1/25	Tue 1/26	Wed 1/27	Thu 1/28	Fri 1/29	Sat 1/30	Sun 1/31	Mon 2/1	Tue 2/2	Wed 2/3	Thu 2/4	Fri 2/5	Sat 2/6	Total	Time Reporting Code
	6.00	8.00	8.00	8.00	8.00	8.00			8.00	8.00	8.00	8.00	8.00	86.00	Regular Pay - REG

Save for Later Submit

Time Entry Example

For non-union, non-exempt employees, the hours should be posted on the timesheet as follows (Note: overtime hours are posted as Regular).

Timesheet

Employee ID: _____

Job Title: _____ Employee Record Number: 0

[Select for Instructions](#)

View By: *Date: << Previous Time Period Next Time Period >>

Workgroup Chapter 11 Exempt  Schedule Standard

Reported Hours: 80.00 Hours Scheduled Hours: 0 Hours

Reported time on or before 09/17/2016 is for a prior period.

From Sunday 09/04/2016 to Saturday 09/17/2016

Sun 9/4	Mon 9/5	Tue 9/6	Wed 9/7	Thu 9/8	Fri 9/9	Sat 9/10	Sun 9/11	Mon 9/12	Tue 9/13	Wed 9/14	Thu 9/15	Fri 9/16	Sat 9/17	Total	Time Reporting Code
	8.00													8.00	Holiday Pay - HOL ✓
		8.00	8.00	8.00	8.00			8.00	8.00	8.00	8.00	8.00		72.00	Regular Pay - REG ✓

Below are a few examples of overtime reporting for different exempt employees.

WORKGROUP	DESCR	Overtime Reporting
C11NONEXM	Ch 11 Non-Union Non-Exempt	Eligible for overtime; overtime hours worked should either be reported as Regular Pay or Comp Time Earned. Will be paid straight time until 80 hr threshold is met.
C11EXEMPT	Chapter 11 Exempt	Not eligible for overtime; any hours reported over the standard tour will be converted into a non-pay time reporting code
C11EXM10	Nonunion exm straight OT elig	Eligible for straight overtime; overtime hours worked must be reported either as Exempt Time Off earned or Overtime for Timekeepers TRC. If any hours reported over the standard tour as Regular Pay, they will be converted into a non-pay time reporting code. Must meet the 80 hr threshold.
C11EXM15	NonUnion Exempt 1.5 OT elig	Eligible for 1.5 overtime; overtime hours worked must be reported either as Exempt Time Off earned or Overtime for Timekeepers TRC. If any hours reported over the standard tour as Regular Pay, they will be converted into a non-pay time reporting code. Must meet the 80 hr threshold.
COMP_1_2	COMP 1&2 Union	Eligible for overtime; overtime hours worked should either be reported as Regular Pay or Comp Time Earned. Must meet the 40 hr threshold