



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Monday, July 20, 2009
CPM 2009-13

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: John Berry, Director

Subject: Overtime Pay and Compensatory Time Off for Schedule C Employees

The U.S. Office of Personnel Management (OPM) has prepared the attached fact sheet on overtime pay and compensatory time off for noncareer employees under General Schedule "Schedule C" appointments. Many Schedule C employees are new to Government, and it is important for managers and supervisors to communicate their department's or agency's policies on the use of overtime pay and compensatory time off within the requirements of law and OPM's Governmentwide regulations. The executive branch is committed to adhering to all laws and regulations while acknowledging that fiscal constraints require that we manage and monitor employee's work schedules carefully. While it is legal and appropriate for Schedule C employees to earn overtime pay or compensatory time off under the normal rules that apply to most other Federal employees, supervisors are expected to be judicious in their use for all employees.

The fact sheet is a brief overview of the rather complicated rules on overtime pay and compensatory time off. In administering these pay provisions, it is important to take into account the facts and context of individual circumstances and follow the law, OPM's Governmentwide regulations, and the agency's implementing policies and instructions. (Note that this overview does not attempt to address the special provisions that apply to certain categories of Federal employees, such as firefighters, criminal investigators and certain other law enforcement officers, employees receiving administratively uncontrollable overtime pay or standby duty pay, employees in combat zones, etc.)

Additional Information

If you have questions or need additional information, please contact your *OPM Human Capital Officer List*. Employees should contact their agency's human resources offices for assistance.

Attachment

cc: Chief Human Capital Officers
Human Resources Directors
Chiefs of Staff

Attachment

Schedule C Employees: Overtime Pay and Compensatory Time Off Fact Sheet

Description

This fact sheet was prepared by the U.S. Office of Personnel Management (OPM) in response to a request from agency Chiefs of Staff. The purpose is to provide a brief, informal overview of the rather-complicated rules on overtime pay and compensatory time off for noncareer employees under General Schedule "Schedule C" appointments. Schedule C employees are covered by the same rules that apply to most other Federal employees. (Some employees, such as Senior Executive Service members (both career and noncareer), are not eligible for overtime pay or compensatory time off.) Schedule C employees are covered by either the overtime pay provisions of the Fair Labor Standards Act (FLSA) or title 5, United States Code (title 5), as administered and regulated by OPM. It is important for managers, supervisors, and employees to know which set of rules apply.

Each department and agency establishes its own policies on the use of overtime pay and compensatory time off for Schedule C employees within the requirements of the law and OPM's regulations. The executive branch is committed to adhering to all laws and regulations while acknowledging that fiscal constraints require that we manage and monitor work schedules carefully. While it is both legal and appropriate for Schedule C staff to earn overtime pay or compensatory time off, supervisors are expected to be judicious in their use.

As we work hard to implement new programs and policies under President Obama, managers and supervisors must provide sound oversight and guidance to Schedule C employees to make certain we meet mission requirements while balancing the need to have appropriate fiscal controls. Schedule C employees should communicate regularly with their managers and supervisors and seek answers for any questions they may have on the Governmentwide rules and the department's or agency's policies on overtime pay, compensatory time off, and compensatory time off for travel.

The following is an informal overview of overtime pay, compensatory time off, and compensatory time off for travel. (Note: This overview does not address the special overtime rules that apply to certain categories of employees, such as firefighters, certain law enforcement officers, and those receiving administratively uncontrollable overtime pay or standby duty pay.) In administering these provisions, managers, supervisors, and employees must take into account the facts and context of individual circumstances and consult OPM's Governmentwide regulations as well as the particular department's or agency's implementing policies and instructions.

Documentation of FLSA Status (Non-exempt or Exempt)

It is important to know which set of overtime rules (FLSA or title 5) cover individual employees. The actual duties an employee performs, which should be documented in his or her position description, determine whether an employee is non-exempt (covered) or exempt (not covered) under the minimum wage and overtime provisions of the FLSA. Each agency's servicing human

resources office determines FLSA coverage, and it is stated on the employee's Standard Form 50 (SF-50), box 35, as N (non-exempt) or E (exempt). Non-exempt employees are covered by the FLSA overtime rules while exempt employees are covered by title 5 overtime rules. The electronic Official Personnel File (eOPF) for each employee contains the SF-50.

Overtime Pay Rules

Employees not covered by FLSA (i.e., FLSA exempt):

- Overtime work must be officially ordered or approved in writing by an authorized official.
- For most FLSA-exempt employees, overtime hours are for work ordered or approved, and performed over 8 hours per workday or 40 hours per workweek. For employees on flexible work schedules, overtime hours are generally for work officially ordered in advance beyond 80 hours per biweekly pay period (i.e., beyond the 80-hour biweekly basic work requirement). (But see below for guidance on the difference between overtime work and credit hours.)
- The overtime hourly rate is capped at one and one-half (1.5) times the rate of basic pay for GS-10, step 1, or the employee's hourly rate of basic pay, if higher. (Any applicable locality pay or special rate supplement is included in "basic pay.")
- The "biweekly pay cap" limits premium pay (overtime pay, compensatory time off, night pay, Sunday pay, holiday premium pay, law enforcement availability pay, administratively uncontrollable overtime pay, and standby duty pay) to the greater of the pay for GS-15, step 10 (including any applicable locality pay or special rate supplement) or the rate payable for Executive Schedule level EX-V (\$143,500 in 2009). In certain emergency or mission-critical situations, the head of an agency (or designee) may choose to apply an annual premium pay cap instead of a biweekly pay cap, subject to the statutory and regulatory requirements.
- When the biweekly pay cap is reached, employees may still be ordered to perform overtime work without receiving further compensation.

Employees covered by FLSA (i.e., FLSA non-exempt):

- Creditable work includes work officially ordered or approved by an authorized official. Generally, any work that is "suffered or permitted" (i.e., work for the benefit of the agency that is not officially authorized or approved by an authorized official, provided management knows or has reason to believe that work is being performed and has an opportunity to prevent the work from being performed) is also creditable as overtime hours. However, for employees on a flexible work schedule, overtime hours are defined to include only hours officially ordered in advance. A supervisor is responsible for preventing the performance of unauthorized work.
- Any hour of work that would be creditable under either title 5 overtime rules or FLSA overtime rules is counted (except that, for employees on a flexible work schedule, overtime hours are limited to hours officially ordered in advance, as explained above). For example, under normal FLSA rules, paid leave or other paid time off is not counted as hours of work for FLSA overtime pay purposes; however, such hours are counted under title 5 overtime rules and thus are counted for FLSA non-exempt Federal

employees. There are other differences between title 5 and FLSA hours of work rules in such areas as travel time and training time. (The use of title 5 hours of work rules for FLSA non-exempt employees is a modification of FLSA authorized by title 5.)

- For most employees, overtime hours are for work performed that is over 8 hours in a day or 40 hours in a workweek. For employees on flexible work schedules, overtime hours are generally those in excess of 80 hours per biweekly pay period. (The 8-hour daily threshold and the 80-hour biweekly threshold are modifications of FLSA overtime rules authorized by title 5.)
- The FLSA overtime pay entitlement is equal to one and one-half (1.5) times the employee's "hourly regular rate," which is computed by dividing total remuneration (not just basic pay) by the total number of hours of work for the given period (usually 1 week). Under OPM regulations, this result is achieved by ensuring that an employee receives (1) the straight time rate of pay for all overtime hours and (2) one-half of the hourly regular rate for all overtime hours.
- No hourly, biweekly, or annual pay caps limit FLSA overtime pay.

Compensatory Time Off

Employees not covered by FLSA (i.e., FLSA exempt):

- May be approved in lieu of overtime pay for irregular or occasional overtime work (i.e., work that is not regularly scheduled).
- May be approved in lieu of regularly scheduled overtime work only for employees working under flexible work schedules.
- Management may mandate the use of compensatory time off only for FLSA exempt employees with pay greater than GS-10, step 10 (including applicable locality pay and special rate supplements), and only in lieu of overtime pay for irregular or occasional overtime work.
- An agency may not allow an FLSA exempt employee to earn compensatory time off by working overtime hours if the employee would be unable to receive overtime pay for the same hours because of the biweekly overtime pay cap. The value of earned compensatory time off is included in applying the premium pay cap (based on the amount of overtime pay the employee would have earned).
- An employee generally must use accrued compensatory time off within 26 pay periods. At that time, unused compensatory time off must be converted to a cash payment (based on the overtime rate in effect when the compensatory time off was earned) or forfeited, depending on the established agency policy.

Employees covered by FLSA (i.e., FLSA non-exempt):

- May be approved in lieu of overtime pay for irregular or occasional overtime work, but only at the employee's request.
- May be approved in lieu of overtime pay for regularly scheduled overtime work at the request of the employee, but only for employees working under flexible work schedules.
- FLSA non-exempt employees may never be ordered to take compensatory time off in lieu of overtime pay.

- The value of compensatory time off earned by FLSA non-exempt employees is not included in applying the premium pay cap.
- If earned compensatory time off is not used with 26 pay periods, or if the employee transfers or separates from the agency, the employee must receive payment for the unused compensatory time off at the overtime rate in effect when earned.

Compensatory Time Off for Travel

- Earned by an employee, without regard to whether he or she is FLSA exempt or non-exempt, for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. (See OPM regulations and fact sheet for more information.)
- Travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel--typically 1 hour for travel within the United States and 2 hours for international travel.
- The value of earned compensatory time off for travel is not included in applying the premium pay cap.
- Under no circumstances may an employee receive payment for unused compensatory time off for travel.

Overtime vs. Credit Hours

Under flexible work schedules, it is important to distinguish overtime hours from credit hours. Under OPM's regulations at 5 CFR 610.404, agencies that authorize a flexible work schedule must establish a time-accounting method that will provide affirmative evidence that each employee who works under a flexible schedule has worked the proper number of hours in a biweekly pay period.

For employees on a flexible work schedule, overtime is all work time officially ordered in advance that is in excess of 8 hours in a day, or 40 hours in a week, or 80 hours in a biweekly pay period. Hours that an employee on a flexible schedule elects to work beyond the employee's normal workday—to accrue hours in excess of the basic work requirement—are credit hours, not overtime hours. A full-time employee may accrue no more than 24 credit hours for carryover from pay period to pay period. The earning of credit hours is subject to agency policies, which may require supervisory permission.

For example, an employee on a flexible schedule receives overtime pay or compensatory time if ordered to work beyond eight hours on a given day, 40 hours during a given week, or 80 hours in a biweekly pay period, depending on the employee's schedule. If the same employee chooses to work extra hours on a given day to earn credit hours or to complete a basic work requirement of 40 hours for the week or 80 hours for a biweekly pay period, the employee is not entitled to overtime pay or compensatory time for such work.

Importance of Education

Since most Schedule C employees are new to Government, OPM advises each department and agency to issue its own advice on overtime rules, compensatory time off, compensatory time off for travel, and use of credit hours under flexible alternative work schedules. Departments and agencies should also consider briefings and/or question and answer sessions with Schedule C employees and their supervisors to provide additional clarification.

Management Responsibilities

It is essential that managers and supervisors provide sound oversight and guidance to Schedule C employees to make certain each department and agency meets regulatory requirements while balancing the need to have appropriate fiscal controls. OPM advises that managers and supervisors consistently provide the level of oversight and management required to maintain compliance with FLSA and title 5 overtime pay and compensatory time off guidance. If managers and supervisors have questions or concerns, they should contact their servicing human resources office.

References

- Title 5 Overtime: 5 CFR part 550
- FLSA: 5 CFR part 551
- Compensatory Time Off for Travel: 5 CFR part 550, subpart N
- Title 5 Overtime Pay: www.opm.gov/oca/pay/html/FACTOT.asp
- Federal Employees and the FLSA: www.opm.gov/FLSA/index.asp
- How to Compute FLSA Overtime Pay: www.opm.gov/oca/pay/HTML/computeflsa.asp
- Flexible Work Schedules: www.opm.gov/oca/worksch/html/awsfws.asp
- Credit Hours under a Flexible Work Schedule:
www.opm.gov/oca/worksch/html/Cred_hrs.asp
- Hours of Work for Travel: www.opm.gov/oca/worksch/html/travel.asp