

# Chapter 21: Overtime and Overtime Compensation

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## Overview

All Louisiana state employees are subject to the U.S. Fair Labor Standards Act or “FLSA” pertaining to overtime compensation. In compliance with federal law, Civil Service requires agencies to comply with FLSA. (For most nonsupervisory employees, this will usually be time-and-one-half compensation for work beyond 40 hours/week.)

Agencies are responsible for understanding and implementing FLSA provisions, i.e. determining exempt/non-exempt status of positions, and compensating non-exempt employees in accordance with the FLSA. The rules in Chapter 21 assume the reader is familiar with the provisions of the FLSA and use the terms “exempt” and “non-exempt” to refer to an employee’s status as defined by FLSA.

FLSA overtime is calculated for NON-EXEMPT employees who **have** worked in excess of the FLSA-defined work-period for their jobs. For most employees, this is 40 hours per week, or a multi-week work schedule where the average hours worked in the work period is 40 per week.

When employees work overtime hours that does not require compensation under FLSA, those hours are referred to as “State Overtime.” State Overtime is defined and governed by Chapter 21.

State Overtime applies to non-exempt employees that work in excess of their regular workday or workweek under circumstances when FLSA does not apply. For example, FLSA does not apply to a non-exempt employee if the employee worked fewer than 40 hours in a week, including the overtime the employee worked outside of his regular work schedule because of leave taken or an observed holiday. In this case, State Overtime would apply to this non-exempt employee.

State Overtime also applies to exempt employees. Exempt employees are never eligible for FLSA overtime, so all overtime worked by exempt employees is State Overtime. The rules provide agencies with options to compensate exempt employees for State Overtime worked; however, the rules do not require overtime compensation for exempt employees.

**NOTE:** The overtime rules make no attempt to define or describe FLSA conditions, except where needed for purposes of clarity or distinction in applying State Overtime vs. FLSA overtime.

## HR Impact

Compliance with overtime compensation requires HR professionals to understand FLSA requirements and how it applies to employees. For instance, FLSA provisions apply to job types such as law enforcement, health care, emergency medical services, and professional and clerical jobs. It is critical for HR professionals to understand which provisions apply to their employees, how they apply and

how compensation should be handled for the specific employee. It is also important for the HR professional to understand when FLSA does not apply and Civil Services Rules do. Overtime may be compensated through compensatory leave or cash payment, depending on the FLSA status of the employee and the hours worked by the employee.

In order to determine proper compensation for exempt or non-exempt employees, it will be necessary to consider multiple rules in combination. To help interpret these rules, [Job Aids and Resources: Overtime Payment Charts](#) have been prepared to help agencies determine when to pay overtime, which method of overtime compensation is allowed, and which rate of overtime is allowed. The charts and other associated rule information can be found in [Job Aids and Resources](#) below.

Many agencies develop their own policies and procedures notifying employees of the authority to require overtime, how overtime will be managed, recorded and compensated taking into consideration a combination of the Civil Service Rules, other authorizing documents such as the Executive Order on Leave for Unclassified Employees and the FLSA regulations. It is HR's responsibility to ensure agency management and employees are aware and understand how overtime works and proper compensation of overtime hours worked.

## Rule-By-Rule Review

### 21.1 Authority to require performance of overtime

This rule clearly states that appointing authorities may require their employees to work overtime.

**NOTE:** It is the employer's responsibility to ensure that the agency carries out its mission and goals without undue disruption. While agencies are encouraged to consider employees' needs when assigning overtime, it's not always possible to predict when overtime will be needed. The agency has full legal authority to order overtime, even when it may be disruptive for the employee.

It is the employee's responsibility to ask about overtime requirements for his position. Employees unable to meet those overtime requirements should seek another position that will better suit his availabilities. Employees who refuse a direct order to work overtime may be subject to disciplinary action. See [Chapter 12](#).

### Rule 21.2 Determination of exempt/non-exempt status of positions

Agencies must determine the exempt or non-exempt status of their positions in accordance with the Fair Labor Standards Act (FLSA).

**TIP:** We recommend that HR offices maintain a list or record in their human resources/payroll systems of all non-exempt positions within the agency.

### **Rule 21.3 Authority for compensation**

(a) All non-exempt employees must be compensated in accordance with FLSA for overtime covered by FLSA. For overtime that is not covered by FLSA, all non-exempt employees are compensated for State Overtime as defined in Rule 21.7.

(b) Exempt employees may be compensated for State Overtime as defined in Rule 21.7.

**NOTE:** Normally, FLSA overtime does not apply until an employee has actually worked IN EXCESS of 40 hours in a workweek. However, FLSA contains special provisions for certain types of positions that normally do not work an 8-hour/day, 40-hour/week. Therefore, it is critical that agencies become familiar with FLSA overtime provisions for the types of positions they use. An agency that compensates its employees in accordance with Civil Service Rules, only, may not be in compliance with FLSA.

### **Rule 21.4 Methods of compensation for overtime**

(a) Overtime compensation can either be cash or compensatory leave (K-time) earned. However, cash payments required under FLSA must be paid in accordance with FLSA.

(b) Because employees with intermittent schedules are not eligible to earn leave, they cannot earn compensatory leave, they must be paid cash for any overtime worked in accordance with their exempt or non-exempt status. This includes employees on Classified WAE appointments.

**IMPORTANT:** An agency that chooses to compensate FLSA overtime with K-time instead of cash must be able to show that the employee has agreed to this form of compensation. This can be done through a collective bargaining agreement, memorandum of understanding, or any other agreement between the agency and representatives of the employee, or it can be done through an agreement arrived at between the agency and the employee before the performance of the work. An easy way to do this is to obtain a signed agreement from the employee at the time the employee is hired and signs his paperwork. The sample agreement is provided in [Job Aids & Resources: Statement of Agreement and Understanding – Compensation for Overtime Work](#).

### **Rule 21.5 Basis for the calculation of hourly rate of pay for overtime**

(a) An employee's base pay plus any base supplement is used to determine the hourly rate of pay for State Overtime when earned at the hour-for-hour rate. (See Rule 21.7 regarding State Overtime.)

(b) State Overtime earned at the time-and-one-half rate may be calculated in accordance with FLSA or with subsection (a) of this rule.

(c) Overtime earned under FLSA must be calculated in accordance with FLSA. Note that the FLSA may require that premium pay, shift differential, and other types of pay, be included when calculating the employee's hourly rate of pay. It is of the utmost importance that agencies become familiar with FLSA hourly rate-of-pay provisions for all positions in their agency.

**NOTE:** Some payroll systems have been programmed to calculate overtime compensation, whether compensatory leave is earned or cash payment is applied, in accordance with FLSA requirements. The LaGov HCM system calculates overtime automatically based on certain data elements in the employee's record ensuring accurate compensation and compliance with the law.

## **Rule 21.6 Compensatory Leave – Crediting and Usage**

(a) An employee must obtain appointing authority approval in order to use compensatory leave he has earned. (Similar to annual leave, K-time can only be used with the agency's permission.)

(b) If an employee has compensatory leave credited, the appointing authority may require the employee to take some or all of the leave at any time.

**NOTE:** Many agencies use this rule to require employees to use their accrued compensatory leave before annual leave is used. Some payroll systems have been programmed to take compensatory leave before annual leave any time the employee has requested personal leave. This reduces the state's liability for future payment and is a legal practice.

(c) An agency may pay the balance of compensatory leave at any time. The rate of pay is calculated in accordance with Rule 21.5 and payment is required under the circumstances set out in Rules 21.10, 21.11, and 21.12.

**NOTE – Using K-time for FMLA absences:** An employee may ask to use compensatory leave to cover a qualifying FMLA (Family & Medical Leave Act) absence if he wishes to do so. But, the employer cannot FORCE an employee to use compensatory time for an FMLA absence. Furthermore, if an employee is allowed to use compensatory leave earned under FLSA (i.e., K-time earned at a time-and-one-half rate), that absence cannot be counted against the employee's FMLA entitlement. When an employee chooses to use state compensatory time (i.e. K-time earned at an hour-for-hour rate) to cover an FMLA absence, the agency may count that absence against the employee's FMLA entitlement.

## **Rule 21.7 Definition of State Overtime**

When an employee is not entitled to overtime under FLSA, State Overtime is credited as follows:

(a) A day off from work due to paid leave or a holiday observed, is considered a day worked for purposes of State Overtime. This part of the rule allows an employee to earn STATE OVERTIME even when the employee has not worked in excess of 40 hours in a week due to a holiday or leave taken.

(b) **State Overtime** is work performed by an employee at the direction of the appointing authority or his designee for the following:

- **In excess of the employee's regularly scheduled work day.** For example, an employee whose regularly scheduled work day is 8 hours earns State Overtime as soon as he has worked in excess of 8 hours. A non-exempt employee will earn FLSA overtime if this work, at the end of

the week, has caused him to work in excess of his normal work period (i.e. 40 hours/week for most employees). For exempt employees, and for non-exempt employees who took leave during the week or observed a holiday during the week and thus did not work in excess of their regular work period, this time worked in excess of the employee's regularly scheduled work day will be State Overtime.

- **In excess of the employee's regularly scheduled work period.** For example, work performed on an employee's normal day off is State Overtime for exempt employees, and is State Overtime for non-exempt employees when it does not cause the employee to work in excess of his FLSA overtime period (i.e., 40 hours per week for most employees).
- **On a holiday, including a designated holiday.** For example, a non-exempt employee who works on a holiday AND also works in excess of his regularly scheduled work period (40 hours/week for most employees) will earn FLSA overtime after the 40th hour has been worked. A non-exempt employee who works on a holiday, but does NOT work in excess of his regularly scheduled work period, will earn State Overtime only. Exempt employees are eligible ONLY for State Overtime, and thus, if they work on a holiday, they may earn State Overtime regardless of the number of hours worked. Remember that "no overtime compensation" is always an option for exempt employees. (See Rule 21.9.)
- **During official office closures.** For example, an employee required to work during an official closure of his agency on a regular workday earns State Overtime. A non-exempt employee who works in excess of his regularly scheduled work period (40 hours in a week for most employees) will earn FLSA overtime. The non-exempt employee will receive State Overtime for work during an official closure and the exempt employee may receive State Overtime for work during an official closure.

## **Rule 21.8 Compensation Rate – Non-Exempt Employees**

(a) For non-exempt employees, all FLSA overtime must be compensated at the time-and-one-half rate.

(b) Non-exempt employees must be compensated for State Overtime at the hour-for-hour rate, unless the Commission has granted an agency an exception to use the time-and-one-half rate, or time-and-one-half is allowed under subsection (c) and (d) below.

(c) During an official closure due to an emergency, an agency may choose to compensate non-exempt employees for State Overtime at the time-and-one-half rate instead of the hour-for-hour rate.

(d) On a holiday, an agency may choose to compensate non-exempt employees for State Overtime at the time-and-one-half rate instead of the hour-for-hour rate.

## **Rule 21.9 Compensatory Rate – Exempt Employees**

Agencies may choose to compensate their FLSA exempt employees for overtime hours worked in any one of the following ways:

(a) No overtime compensation. There is no requirement to compensate exempt employees for any overtime worked. An appointing authority may choose “no overtime compensation” for all exempt employees, or grant overtime compensation to one type of exempt employees but not to others. However, there should be a rational business reason for different treatment of employees, such as different types of work or levels of responsibility.

(b) Compensation at the hour-for-hour rate. (K-time or cash)

(c) During an official closure due to an emergency, overtime may be compensated at the time-and-one-half rate.

(d) With the Commission’s approval, overtime may be compensated at the time-and-one-half rate.

**NOTE:** When using Rule 21.9(d), agencies usually request the Commission to consider their particular circumstances. In times of severe crisis, the Commission may grant “blanket” approval on its own.

### **Rule 21.10 Caps and required payment for overtime earned at the time-and-one-half rate**

This rule applies when an employee remains employed at the same agency from one fiscal year to the next. For treatment of compensatory leave when an employee separates from state or transfers to a different agency during the year, refer to Rule 21.12.

(a) Accrual of K-time earned at the time-and-one-half rate is capped at the amount allowed under FLSA.

(b) Once an employee has reached the FLSA accrual cap for time-and-one-half K-time, he must be paid cash at the time-and-one-half rate for any additional FLSA overtime worked.

### **Rule 21.11 Caps, Required Payment and cancellation of overtime earned at the hour-for-hour rate**

This rule applies to hour-for-hour State Overtime when an employee remains employed at the same agency from one fiscal year to the next. For treatment of compensatory leave when an employee separates from state service or transfers to a different agency during the year, refer to Rule 21.12.

(a) An employee can accrue more than 360 hours of hour-for-hour overtime per year, but, an employee cannot carry forward more than 360 hours of hour-for-hour overtime from one fiscal year to another. However, an appointing authority may ask the Commission for approval to carry over up to 540 hours of hour-for-hour overtime by showing it is necessary to maintain essential services to preserve life, health, or welfare of the public.

(b) A non-exempt employee, who has more than 360 hours of hour-for-hour compensatory leave at the beginning of a new fiscal year, must be paid for any hours over 360 within 90 days of the new fiscal year. Payment will be calculated in accordance with Civil Service Rule 21.5(a).

(c) An exempt employee, who has more than 360 hours of hour-for-hour compensatory leave at the beginning of a new fiscal year, may be paid for any hours over 360 within 90 days of the new fiscal year. If payment is made, it is calculated in accordance with Civil Service Rule 21.5(a). If payment is not made, the excess leave will be cancelled.

**TIP:** When applying this rule, agencies may use the compensatory leave balance that appears at the end of the pay period, which includes the last pay period of the fiscal year. The rule provides a 90-day window to pay excess compensatory leave. Agencies should use that window to ensure that all prior pay-period adjustments have been made so that payment or cancellation of leave is based on an accurate end-of-year balance.

### **Rule 21.12 Payment or Cancellation of Compensatory Leave upon Separation or Transfer**

#### (a) Time and One-half Compensatory Leave

When an employee separates from state service or transfers to another agency, all time and one-half compensatory leave earned by the FLSA non-exempt or exempt employee shall be paid in accordance with the calculation required under FLSA. This includes State Overtime that was earned at the hour-and-one-half rate.

**IMPORTANT:** This rule is necessary to clarify that State Overtime earned at the time and one-half rate is to be treated the same as FLSA time and one-half overtime for payment and cap purposes. It is also necessary to authorize payments to exempt employees for their overtime earned at the time and one-half rate.

#### (b) Hour for Hour Compensatory Leave

- An exempt employee may be paid hour-for-hour compensatory leave upon separation or transfer at the employee's final regular rate of pay calculated in accordance with Civil Service Rule 21.5(a). There is no requirement to pay the employee.
- If an exempt employee is not paid the hour-for-hour compensatory leave earned upon separation or transfer, the leave is cancelled. Any cancelled compensatory leave will not be re-credited upon reemployment in that or any other department.
- Upon separation, non-exempt employees must be paid for all unused compensatory leave earned at the hour-for-hour rate.

### **Rule 21.13 Exceptions to the Overtime Rules**

The Commission may grant exceptions to these rules.

## **Procedures**

- [Methods of Compensation for Overtime Hours](#)

## Job Aids and Resources

- [Overtime Payment Charts](#)
- [Overtime Quick Reference](#)
- [Statement of Agreement and Understanding – Compensation for Overtime Work](#)