

South Carolina Department of Public Safety

Office of the Director

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POLICY	400.15
EFFECTIVE DATE	JUNE 6, 1995
ISSUE DATE	JUNE 10, 2003
SUBJECT	OVERTIME
APPLICABLE STATUTES	
APPLICABLE STANDARDS	22.1.1 (e) (f)
DISTRUBTION	TO ALL EMPLOYEES

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I. POLICY

It is the policy of the Department of Public Safety that employees should only be required to work overtime on an occasional basis to meet a sudden increase in workload or to meet the demands of a crisis situation. [22.1.1 (f)] All department supervisors shall ensure that working approved overtime is an exception to the regular work schedule for any division, office, function, or unit of the Department of Public Safety. To confirm that the department comports with all Federal and State requirements regarding the use of, payment for, and granting of compensatory leave time for overtime hours to all employees, both exempt and non-exempt, this policy sets forth the procedures governing the payment for overtime worked or granting compensatory leave time for overtime worked. [22.1.1 (e)]

Unless specifically approved by the director, all overtime shall be granted as compensatory leave time and whenever practicable, accrued compensatory leave shall be scheduled for use in lieu of annual leave. [22.1.1 (e)] Supervisors must secure the approval of the director before authorizing the working of overtime by department employees. [22.1.1 (f)] However, the director may delegate the authority to approve the working of overtime to the deputy directors or department heads.

II. DEFINITION OF OVERTIME

Overtime is all hours worked in excess of 40 in a seven (7) consecutive day work period for non-law enforcement personnel. For law enforcement personnel, overtime is all hours worked in excess of 86 hours in a 14-day period. [22.1.1 (e) (f)]

III. LAW ENFORCEMENT PERSONNEL DEFINED

For the purpose of this policy, law enforcement personnel refer to any commissioned law enforcement employee assigned to the following department functions:

- A. South Carolina Highway Patrol
- B. State Transport Police
- C. Bureau of Protective Services
- D. Office of Professional Responsibility
- E. Any other operation or function designated by the director for law enforcement coverage under the Fair Labor Standards Act.

IV. EXEMPT, NON-EXEMPT AND HOURLY RATE EMPLOYEES

Section 13(a)(1) of the Fair Labor Standards Act, as amended, exempts from the wage and hour provisions of the Act any individual employed in a bona fide executive, administrative, or professional capacity. Under the provisions of the Act, the director shall designate those employees classified as exempt employees. Each division, office and function of the department shall be advised by the Human Resources Office as to which employees are classified as exempt.

Section 7(k) of the Act provides the department with a limited exemption from the weekly wage and hour provisions of the Act. The exemption provides that overtime compensation, in premium pay or compensatory time, is required for all departmental law enforcement personnel for all hours worked in excess of 86 in a 14 day work period. If a non-exempt law enforcement employee is paid in cash wages for overtime hours worked, such wages must be paid at one and one-half times the employee's regular rate of pay. [22.1.1 (f)]

All other salaried employees of the Department of Public Safety are considered non-exempt under the provisions of the Act and are subject to the minimum wage and overtime pay requirements of Section 7(a) of the Act. For these employees, compensation shall be based upon a forty (40) hour workweek or two thousand eighty (2080) hours per year. The regular rate of pay for these employees is calculated by dividing the employee's annual salary by 2080 hours. [22.1.1 (f)]

All hourly employees of the department shall be compensated for all hours worked up to forty hours at their assigned hourly rate and at a premium rate for all hours worked over 40 hours.

V. COMPENSABLE HOURS OF WORK

Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is required or permitted to work for the employer. This includes any bona fide work which the employee performs on or away from the premises if the supervisor knows or has reason to believe that the work is being performed.

A. Lectures, Meetings and Training

When employees are required to attend lectures, meetings, training programs, etc., in the course of their official duties such attendance time shall be considered hours worked.

B. Travel Time [22.1.1 (f)]

Travel time outside the employee's normal working hours may be considered as hours worked for purposes of this overtime policy under some conditions. Normal home-to-work travel or vice versa is not compensable time worked and thus cannot be relied upon in such computations of hours worked. Time spent traveling to reach or return from a destination in the performance of official business may be considered time worked for purposes of this policy as provided for in the regulations promulgated under the Fair Labor Standards Act (29 C.F.R. 785, et seq.) and any applicable state regulations.

If an employee knows or believes that time spent in travel as part of his principal activity for the department will trigger the provisions of this overtime policy because the employee will travel during hours outside the scope of his regular working hours, then the employee must advise his supervisor. A myriad of work-related scenarios are possible under the applicable Federal and State regulations and the supervisor should contact the department's payroll office to ensure that the travel time will be considered as hours worked in the employee's particular situation. As with any overtime, the supervisor must secure the approval of the director or his designee. Such approval should be secured in advance whenever possible but failure to secure advance approval will not preclude the consideration of the travel time as time worked, particularly when circumstances outside the employee's control trigger the travel outside the normal duty hours.

C. On Call and Call Back Situations [22.1.1 (f)]

If an employee who is on-call is not confined to his or her home or any particular place but is required only to leave word where he or she can be reached, the hours spent on-call are not regarded as working hours. Likewise, the assignment of a beeper to a departmental employee does not meet the definition of "hours worked" for purposes of compensation.

"Call Back" is defined as a call by the department for an employee to report to work either before or after normal duty hours to perform emergency services. The director shall determine which classifications of employees shall be subject to "call back". Non-exempt employees shall be compensated for hours worked as a result of a "call back" at their regular hourly rate plus any shift premium for which they might be eligible, and such time shall be counted in computing any overtime that may be due. In the event it becomes necessary for an employee to be called back for emergency services and the services rendered require less than two (2) hours on the job, or in the event no work is available when he reports, a minimum of two (2) hours work time shall be credited. An employee shall not be credited with nor paid for call back time if:

1. The recall to work ("call back") has been cancelled and the employee received notice in advance not to report to work, or
2. The employee refuses alternative work that is offered upon reporting to work.

D. Meal Periods [22.1.1 (f)]

A bona fide meal period of thirty (30) minutes or more which occurs during the scheduled workday is not hours worked if the employee is completely relieved from duty for the purpose of eating a meal.

E. Rest Periods [22.1.1 (f)]

Rest periods or "coffee breaks" of short duration shall be counted as hours worked. For the Department of Public Safety, one (1) morning and one (1) afternoon "break" of no more than fifteen (15) minutes each is permitted. Breaks shall not be used to allow an employee to come in late, leave early or extend the lunch period.

F. Holidays [22.1.1 (f)]

Any employee required to work on a legal holiday shall be given an equivalent amount off, up to the maximum of the employee's average working day, within ninety (90) calendar days. For example, an employee who is scheduled to work a 7.5 hour work day can only be given a maximum of 7.5 hours in commensurate time off, even if the employee actually works 12 hours on the holiday. Time worked on a legal holiday shall be used in computing total hours worked.

G. Leave Status [22.1.1 (f)]

Time spent in leave status is not considered hours worked and may not be used in computing total hours worked for overtime compensation purposes.

VI. NON-EXEMPT EMPLOYEES

A. Non-Law Enforcement Personnel [22.1.1 (e) (f)]

1. Payment for Overtime [22.1.1 (e) (f)]

Employees classified as non-law enforcement personnel will either be paid one and one-half (1 1/2) times their regular rate of pay for all hours worked over 40 in a seven (7) day work period, or be granted compensatory leave time at a rate of one and one-half (1 1/2) hours for each hour in excess of 40. [22.1.1 (e)] The director or the designated departmental official shall determine if overtime compensation or compensatory leave time will be granted to non-exempt employees.

2. Work Period [22.1.1 (f)]

For non-law enforcement personnel, the normal workweek shall be either 37.5 hours or 40 hours as established by the director or his designee. However, employees whose normal work week is 37.5 hours shall not receive additional compensation or compensatory leave time for hours worked between 37.5 and 40 hours per week. [22.1.1 (e)] The work period for non-law enforcement personnel begins at 12:01 a.m. on Sunday and ends at 12:00 midnight the following Saturday.

3. Record Keeping [22.1.1 (f)]

The department shall maintain records for each employee that document all information required to be maintained by Federal and State laws, rules and regulations. For non-exempt employees this shall include:

- a. Employees assigned workweek (Time of day and day of week that the workweek begins.)
- b. Regular hourly rate of pay applicable for any week in which overtime is worked and overtime pay is due.

Exempt employees (law enforcement and non-law enforcement) may be given compensatory time off for any overtime worked at the discretion of the director or his designee. If given, however, it will not be in an amount greater than one hour for each hour of overtime worked and may be at a lesser rate as the director or his designee deems appropriate. [22.1.1 (e)]

VIII. OTHER GENERAL MATTERS CONCERNING THE USE OF OVERTIME

Under warranted circumstances and where approved in advance by the Director or designated departmental official, a non-exempt employee may be allowed to work in excess of the normal workday and may be given time off during the same workweek at the rate of an hour for an hour to avoid working more than 40 hours in the workweek. This adjustment is neither applicable to nor available for hours worked between 37.5 and 40.0 hours of any workweek. This type of work rescheduling precludes working overtime and the need for overtime payment.

Dual employment that will result in an overtime liability for this department will not be approved effective with the issuance of this policy.

A non-exempt employee and his or her supervisor may not waive or attempt to waive the requirement that overtime pay must be paid or compensatory time granted for all overtime worked.

All non-law enforcement (non-exempt) personnel should accrue no more than two hundred and forty (240) compensatory hours. In accordance with Fair Labor Standards Act, non-exempt employees must receive payment for all additional overtime worked when the employee's compensatory leave balances reach the maximum of two hundred and forty (240) hours. [22.1.1 (e)] It shall be the responsibility of each supervisor and departmental head to monitor the two hundred and forty (240)-hour compensatory accrual limit and ensure control over compensatory balances.

All law enforcement personnel (non-exempt) shall accrue no more than four hundred and eighty (480) compensatory hours. In accordance with the Fair Labor Standards Act, non-exempt law enforcement personnel must receive payment for all additional overtime worked when the employee's compensatory leave balances reach the maximum of four hundred and eighty (480) compensatory hours. [22.1.1 (e)] It shall be the responsibility of each supervisor and departmental Head to monitor the four hundred and eighty (480)-hour compensatory accrual limit and ensure control over compensatory balances.

It shall be the responsibility of each manager to determine that the provisions of this policy are administered in the best interest of the department. [22.1.1 (f)] Although each manager is responsible for securing the necessary approval in advance of any employee working overtime, it is equally important to control unauthorized overtime. Unauthorized work shall be counted as hours worked if the responsible manager could have stopped the unauthorized overtime work but did not, or if the responsible manager knows or has reason to know of the practice of working unauthorized overtime. Failure to stop such unauthorized work, failure to change the practice of working unauthorized overtime, or requiring employees to work overtime without properly reporting such overtime worked, may result in disciplinary action against all responsible managers.

APPROVED BY THE OFFICE OF HUMAN RESOURCES BUDGET AND CONTROL

By Order of the Director
Date June 10, 2003

B. Boykin Rose

Director
S C Department of Public Safety

The Original Signed Copy of this Policy
is on File in the Office of the General
Counsel