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NGHI-HRO

4 June 2020

MEMORANDUM FOR Hawaii National Guard Title 32 Technicians and Title 5 Employees

SUBJECT: Overtime Pay, Compensatory Time and Holiday Pay

1. This policy directive replaces NGHI-HRO Memorandum dated 20 July 2018, Interim Overtime and Compensatory Time Policy for Title 5 Hawaii National Guard (HING) Federal Employees.
2. Applicability. This policy directive applies to all Title 32 (T32) Dual Status Technicians and Title 5 (T5) National Guard Employees.
3. Purpose. This policy letter outlines the guidelines to be followed for requesting and authorizing overtime pay, compensatory time, and holiday premium pay for Hawaii National Guard employees. The objective of this policy is to limit the amount of paid overtime and compensatory time, ensure that overtime/compensatory time is used only when necessary, and to ensure that employees are properly compensated for work performed.
4. References.
 - a. 5 USC § 5542 and 5547 Employee Coverage
 - b. 5 USC § 5542 (a) (2) Overtime Hourly Rate
 - c. 5 USC § 5543 and 6123 (a) (1) Compensatory Pay
 - d. 5 CFR 550.114 and 551.531 Compensatory Pay
 - e. 5 CFR 550.1401-1409 Compensatory Travel Pay
 - f. 5 CFR 550.111-114 Overtime Pay
 - g. Chief National Guard Bureau Notice (CNGBN) 1408, Overtime and Compensatory Time Policy, 18 July 2018

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5. General. The Fair Labor Standards Act (FLSA), prescribes standards for basic minimum wage and overtime pay. It requires employers to pay covered employees, who are not otherwise exempt, at least the federal minimum wage and overtime pay of one-and-one-half (1½) times the regular rate of pay. All Dual Status T32 Technicians are classified as "EXEMPT" from FLSA requirements under 32 USC §709 and not entitled to overtime compensation.

6. Policy. The following procedures will be adhered to when overtime work is required. Overtime should not be recurring. It is expected that normal duties can be accomplished within the normal duty day. Overtime should be limited to cases of necessity such as warfighter readiness, emergencies, safeguarding life and property, documented customer demands, and instances where savings can be demonstrated.

Compensatory Time

a. Compensatory time off is time off from regularly scheduled work hours in lieu of overtime pay. Compensatory time is accrued in lieu of payment for an equal amount of time spent in irregular or occasional overtime work. T5 and T32 employees are both eligible to earn compensatory time.

b. An NGB Form 46-14 (Request, Authorization, and Report of Compensatory Time, Travel Compensatory Time, Holiday Premium and Overtime) (Encl 1) must be approved in advance when anticipated and cannot be earned when payment of the overtime hours at overtime rates would be mandatory. Compensatory time will not be used before it is authorized and earned.

c. T32 Technicians are only authorized compensatory time IAW 32 U.S.C. 709.

d. T5, FLSA Non-exempt employees and T5 FLSA Exempt employees whose rate of pay is equal to or less than GS-10, Step 10, who are eligible for overtime have a choice of earning either overtime pay or compensatory time. These employees cannot be directed to earn compensatory time if overtime pay is not available. Supervisors may inform but cannot demand these employees earn compensatory time in lieu of overtime. However, the employee may request compensatory time instead of overtime. A memorandum requesting to earn compensatory time in lieu of overtime must be completed and approved prior to the overtime work (Encl 2).

(1) A T5 employee's FLSA status (exempt or non-exempt) is determined by each individual's position description (PD).

(2) FLSA status is located in the Position Information block on the cover sheet of the PD.

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e. T5 FLSA Exempt employees whose basic pay exceeds the maximum rate for a GS-10, Step 10, will normally receive compensatory time for overtime work instead of receiving overtime pay.

(1) A T5 employee's FLSA status (exempt or non-exempt) is determined by each individual's PD.

(2) FLSA status is located in the Position Information block on the cover sheet of the PD.

f. Compensatory time must be used within 26 pay periods from the pay period in which it was earned. Compensatory time must be taken before annual leave, except in those instances where forfeiture of annual leave will occur.

g. T5 Non-exempt employees will be compensated for the compensatory time earned if the employee fails to use their compensatory time by the end of the 26th pay period from when earned, transfers to another agency or separates from federal service. Compensation will be at the overtime rate in affect when earned.

h. T5 exempt employees **may** be compensated for the compensatory time earned if the employee fails to use their compensatory time by the end of the 26th pay period from when earned, transfers to another agency or separates from federal service or forfeit the unused compensatory time off, unless failure to use the compensatory time off is due to an exigency of the service beyond the employee's control. (An FLSA-exempt employee whose earned compensatory time off would otherwise be forfeited due to an exigency of service beyond the employee's control must receive payment for the unused compensatory time off at the overtime rate in effect when earned.)

Compensatory Time for Travel

a. For all T5 employees and T32 technicians, time spent traveling away from official duty station is also hours of employment if the time spent is within the days and hours of an employee's regularly scheduled administrative workweek. Premium pay does not apply to travel time on a Sunday or a holiday. The Comptroller General has ruled that travel time during a Sunday or holiday (whether driving or riding) is not work time, and therefore, does not fall within an employee's regularly scheduled administrative workweek. In this circumstance, compensatory time for travel will be authorized.

b. Compensatory time off for travel may be earned by any T5 or T32 employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Travel must be officially authorized for work purposes and must have prior approval by an authorized agency official.

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c. For the purpose of compensatory time off for travel, time in a travel status includes:

(1) Time spent traveling between the official duty station and a temporary duty station;

(2) Time spent traveling between two temporary duty stations;

(3) The usual waiting time (1-2 hours) that precedes or interrupts such travel (e.g., waiting at an airport or train station prior to departure). An extended waiting period over 3 hours, which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes is not considered time in travel status, or;

(4) Determinations regarding what is creditable for an employee taking delay in route is within the sole and exclusive discretion of the agency.

d. T5 employees. When an employee is traveling in a compensatory status, the employee may not participate in work as doing so would negate the earning of compensatory time and the employee would then be entitled to overtime. Changes to employees normal regularly scheduled basic work week solely to include travel hours so that work may be permitted is not authorized. Time spent traveling is hours of work if:

(1) An employee is required to travel during regular working hours (e.g., during the regularly scheduled administrative workweek);

(2) An employee is required to work during travel (e.g., by being required to drive a Government vehicle as part of a work assignment);

(3) An employee is required to travel as a passenger on a 1-day assignment away from the official duty station; or

(4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

e. Meal periods **are not** creditable travel time. For every eight and one-half (8½) hours of compensatory time travel claimed, ½ hour must be deducted as a bonafide meal period. **Exception:** in a situation where the employee is continuously traveling in a conveyance (aircraft) the deduction does not apply.

f. Travel performed within the regularly scheduled duty hours on a holiday or a day designated as the "in lieu of holiday" does not earned compensatory time.

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g. Commuting time definition/deduction. Normal commuting time from home to work and from work to home are not considered hours of work. For an employee assigned to a temporary duty station overnight, normal "home-to-work/work-to-home" commuting also includes travel between the employee's temporary place of lodging and a work site within the limits of the temporary duty station. If an employee (T5 or T32) is required to travel directly between home and a temporary duty location outside the limits of the employee's official duty station, the time the employee would have spent in normal commuting must be deducted when calculating hours of work in excess of the employees regularly scheduled administrative workweek.

h. Training. Except for limited situations, prohibits payment of any form of premium pay (holiday pay/night/Sunday differential, standby, authorized unscheduled overtime, availability pay, and overtime) for time spent in training.

i. Compensatory time for travel is normally forfeited, if not used, after 26 pay periods. Payment for unused travel compensatory time is strictly prohibited by 5 USC, 550b (b).

j. See Enclosure 3 for travel compensatory examples.

Overtime Pay. Overtime pay is limited to T5 employees only for hours of work officially ordered or approved. All overtime work should be ordered and approved in advance and is normally applicable to special projects or peak workloads pursuant to mission needs. Overtime will not be used to accomplish day to day assignments.

a. Non-exempt. T5 FLSA Non-exempt employees are entitled to overtime pay (normally time and a half). Supervisors cannot request that a non-exempt employee earn compensatory time in lieu of overtime. However, the non-exempt employee may request compensatory time instead of overtime. A memorandum requesting to earn compensatory time in lieu of overtime must be completed and approved prior to the overtime work (Encl 2).

b. Exempt. T5 FLSA Exempt employees are not entitled to overtime under the FLSA but are entitled to overtime under T5 rules. Supervisors must first offer compensatory time. No work beyond normal duty hours will be allowed if the employee declines compensatory time. Supervisors with mission critical needs may send requests for overtime to their respective approving authorities.

c. Overtime eligible T5 employees cannot be directed to work compensatory time if overtime pay is not available but they may choose to receive compensatory time off instead of overtime pay.

d. Overtime work and pay will be computed IAW 5 CFR 550.112-113.

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(1) If an employee works a regular tour of duty then overtime work is in excess of eight hours in a day or forty hours in a work week.

(2) If an employee works a compressed or flexible work schedule, then overtime work is in excess of the basic work requirement for the applicable schedule.

(3) For each employee whose rate of basic pay does not exceed the GS-10 Step 1, the overtime hourly rate is 1½ times his or her hourly rate of basic pay.

(4) For each employee whose rate of basic pay exceeds GS-10 Step 1, the overtime hourly rate is the greater of;

(a) The hourly rate of basic pay for GS-10 Step 1, multiplied by 1.5; or

(b) The employees hourly basic rate of pay.

e. When an overtime requirement conflicts with an employee's religious obligations or practices supervisors should consider changing tours of duty involving the assignment of overtime by permitting the employee to perform the overtime on another day or to excuse him or her from the overtime assignment. **Exception:** if failure to perform the overtime will prevent accomplishment of the mission, the employee is expected to perform the overtime. Any decision regarding what legally constitutes "preventing mission accomplishment" and justifies not granting a religious accommodation should be made in conjunction with the local Staff Judge Advocate (SJA).

Overtime Hours of Work for Travel. Travel time is considered hours of work for non-exempt FLSA employees only when:

a. The travel involves the performance of actual work while traveling (e.g., is required to drive a vehicle, or perform other work, while traveling).

b. The employee is required to travel as a passenger on a one-day assignment away from the duty station.

c. The employee is required to travel as a passenger on an overnight assignment away from the duty station during hours on non-workdays that correspond to the employee's regular working hours.

d. Travel time is considered hours of work for most exempt FLSA employees if the travel is ordered or approved, and meets one of the following conditions.

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e. The travel involves the performance of actual work while traveling (e.g., motor vehicle operator is required to drive a loaded truck; pilot an airplane).

f. The travel is incident to travel that involves the performance of work while traveling (e.g., is required to drive an empty truck back to the point of origin).

g. Do not adjust an employee's normal regularly scheduled administrative workweek solely to include travel hours that would not otherwise be considered hours of work.

Holiday Premium Pay

a. An employee who performs work on a holiday designated by federal statute, is entitled to Premium Pay. That is pay at the rate of basic pay plus premium pay at a rate equal to the rate of the basic pay.

b. Premium pay for holiday work is in addition to overtime pay or night pay differentials or premium pay for Sunday work. It is not included in the rate of basic pay used to compute the overtime pay or night pay differential or premium pay for Sunday work.

c. An employee required to perform any work on a designated holiday is entitled to pay for at least two hours of holiday work.

d. For an employee working a compressed work schedule, holiday pay for non-overtime work is limited to the number of hours normally scheduled for that day.

7. Administration.

a. All HING employees will use NGB Form 46-14 (Encl 1) to request and authorize compensatory time, travel compensatory time, holiday premium and overtime pay. Timekeepers are required to maintain a hard-copy of each NGB Form 46-14 in addition to any automated requests made in the on-line time and attendance system.

b. The requesting official will then submit the form to the HIARNG HRO Management Analyst (ng.hi.hiarng.mbx.nghi-hro-tech-ct-ot@mail.mil) or HIANG comptroller (154WG154CPTFBudget@us.af.mil) at least 7 workdays before the overtime is to be worked, regardless of whether it is paid overtime or compensatory time in order to validate funds availability.

c. HRO will maintain a current listing of T5 excepted service employees who are FLSA "non-exempt" and eligible for overtime pay.

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d. The approving authority for overtime pay and overtime travel pay is the Human Resources Officer/Deputy Human Resources Office for HIARNG personnel and the Director of Staff for HIANG personnel.

e. The Approving Authority for compensatory time or travel compensatory time is the employee's immediate supervisor.

f. Common definitions regarding overtime pay compensatory time and Holiday pay is attached (Encl 4).

8. Point of contact for this memorandum is Mr. John Yim, Assistant Human Resources Officer, at 808-672-1555 or john.k.yim4.civ@mail.mil.

4 Encls

1. NGB Form 46-14
2. Compensatory Time ILO
Overtime Request
3. Travel Compensatory Examples
4. Definitions

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