

# BPA Human Resources Desk Reference

## Pay and Compensation for Exempt and Non-Exempt Annual Employees

**HR Desk Reference: 410-05-01**

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# 1. Introduction

A. **Governance model:** This HR Desk Reference is part of a tiered approach to BPA’s Human Resources governance model. The first tier is the BPA Human Resources Policy, which provides broad BPA-wide guidelines and standards for making specific human resources-related decisions and specifies who in BPA is delegated the authority to make them.

The second tier consists of HR Desk References covering more detailed instructions concerning program administration and processes. These second tier documents will be authorized in the “Related HR Desk References” section of the BPA HR Directive when they are published as an extension of a specific HR Policy.

The third tier consists of Standard Operating Procedures applicable to a specific business process. Standard Operating Procedures may stand alone or be encompassed in an HR Desk Reference.

B. **Design of the HR Desk Reference:** In order to support the overarching guidance contained in the relevant HR Policy, this HR Desk Reference provides a standardized and consistent approach to the Human Resources Service Center (HRSC) and BPA Management’s administration of the programs and processes contained in this HR Desk Reference.

C. **Using the HR Desk Reference:** The recorded information is an integral part of all business functions at BPA and as such, is an asset of the agency that is handled and managed based upon content and the circumstances surrounding the function. Users of this HR Desk Reference are likely to reference a specific function or procedure rather than reading it in its entirety, and it is therefore structured to reflect this type of use.

## 1.2 Purpose

This HR Desk Reference implements BPA HR Directive 410-05: Employee Pay and Compensation Incentives. It is intended to assist managers, supervisors, and employees in understanding the rules, policies, and procedures for non-exempt employees covered under the Fair Labor Standards Act (FLSA) for earning paid overtime and compensatory time in lieu of paid overtime under 5 CFR, Part 551, “Pay Administration Under the Fair Labor Standards Act,” and for exempt employees earning paid overtime and compensatory time in lieu of paid overtime, religious compensatory time, and compensatory time off for travel under 5 CFR, Part 550, “Pay Administration”. This guidance also provides guidance on filing FLSA overtime pay claims to the Office of Personnel Management (OPM).

## 1.3 Background

Overtime entitlement under FLSA, varies for non-exempt and exempt employees. For FLSA non-exempt employees, it requires an initial determination that activities performed qualify as “hours of work”. Once this threshold determination is made, “overtime” is based on

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whether the time spent performing the work is in excess of the number of hours in the basic work requirement. The qualifying hours of work in excess of the basic work requirement are compensated with overtime pay or compensatory time off in lieu of overtime pay. Overtime must be authorized and approved in advance; however, FLSA non-exempt employees (except those on flexible schedules) must be compensated for “suffered or permitted” overtime. Bargaining unit employees should refer to their collective bargaining agreements for negotiated exceptions.

In contrast under 5 CFR, Part 550, Pay Administration, BPA annual employees exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), may earn overtime pay or compensatory time off for qualifying hours of work in excess of their basic work requirement. Compensatory time in lieu of overtime is typically paid out at the employee’s overtime rate of pay in effect when earned if not used by the end of the 26<sup>th</sup> pay period after it was earned.

## 1.4 Applicability

- A. **FLSA Overview:** The FLSA provides minimum standards for wages and overtime entitlements, defines procedures and conditions under which covered hours of work must be paid, and sets forth provisions related to child labor, home to work travel, and criteria for exempting employees from coverage of its provisions.
  - 1. FLSA is regulated and administered by OPM as it applies to federal employees. FLSA (Title 29 U.S.C., Chapter 8) has been modified to reflect special rules for federal employees as authorized by Title 5 of the United States Code. Those special rules are codified in 5 CFR, Part 551.
  - 2. The employee’s exemption status is recorded in block 35 on the SF-50, Notification of Personnel Action. “N” in block 35 indicates that the employee is “non-exempt”, i.e., covered by FLSA. “E” in block 35 indicates that the employee is “exempt”, i.e., not covered by FLSA.
- B. Guidance on overtime and compensatory time in lieu of paid overtime applies to all FLSA-exempt BPA annual employees, except those in the Senior Executive Service (SES). An employee’s exemption status is recorded in block 35 of SF-50, Notification of Personnel Action.
- C. Annual employees who are non-exempt from the FLSA may also be eligible to earn overtime for work qualifying as “hours of work” as summarized in Section 2.1 of this guide. Managers should contact HRSC, Employee and Labor Relations to determine applicability for FLSA non-exempt employees. However, a non-exempt employee is paid the FLSA overtime rate for hours of work qualifying as Title 5 overtime. The Overtime and Compensatory Time for Annual Employees Covered under the Fair Labor Standards Act HR Desk Reference, should be read in conjunction with this guide.

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- D. BPA hourly employees are covered by the relevant procedures for the request, approval, and documentation requirements (e.g., Section 3A(2)) and FLSA overtime claims procedures (Section 3D) of this guide. Otherwise, BPA hourly employees are covered by the overtime rules and provisions of the BPA-Columbia Power Trades Council (CPTC) collective bargaining agreement.

## 1.5 Terms and Definitions

- A. **Administrative workweek:** Administratively established period of seven (7) consecutive calendar days designated in advance, normally from 12:00 a.m. Sunday to 12:00 a.m. the following Sunday. Variance from this standard workweek may be authorized in writing by a Tier I or equivalent manager or by organization’s Vice President, as provided in HR Desk Reference 410-06-01: Hours of Duty and Credit Hours.
- B. **Basic work requirement:** The number of hours excluding overtime hours that must be regularly accounted for on the time and labor report. Completion of the basic work requirement includes hours reported as work, leave, or credit hours used.
- C. **Basic workweek:** For full-time employees not on a compressed work schedule, the regularly scheduled 40-hour workweek. For full-time employees on a compressed work schedule, the regularly scheduled 80-hour bi-weekly work schedule specified in the published compressed work schedule. For all part-time employees, the hours specified on their current SF-50, Notification of Personnel Action.
- D. **Compensatory time:** An alternate form of compensation for overtime worked. Generally, it is an equal amount of time off, instead of pay, for overtime hours worked subject to certain limitations described in this guidance.
- E. **Compressed work schedule:** A fixed work schedule that enables full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays (e.g., a 4-10 schedule consisting of four 10-hour days per week). *(Note: BPA established CWS for annual employees, including CWS for 12-hour rotating shift work groups, are located in the [BPA Policy Library](#)).*  
  
For a part-time employee, a basic work requirement of less than 80 hours bi-weekly that is scheduled for less than 10 workdays and that may require the employee to work more than 8 hours in a day.
- F. **Exempt employees:** Employees covered under 5 CFR 550, are not covered by the minimum wage and overtime provisions of the FLSA.
- G. **Flexible work schedule:** A work schedule established under 5 U.S.C. 6122 that has a bi-weekly basic work requirement of 80 hours for a full-time employee (less than 80 hours for a part-time employee), and allows an employee to determine his/her own schedule within the limits set by the agency, i.e., vary arrival and departure times outside of core

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hours with supervisor approval and may include earning and using credit hours to vary the workday or workweek.

- H. **Holiday work:** Non-overtime work performed during a regularly scheduled, daily tour-of-duty on a holiday.
- I. **Night work:** Regularly scheduled work (including regularly scheduled overtime) performed between the hours of 6 p.m. and 6 a.m.
- J. **FLSA pay claim:** Employee claim of entitlement to minimum wage or overtime pay for work performed under the FLSA.
- K. **Non-exempt employees:** Employees covered by the minimum wage and overtime provisions of the FLSA.
- L. **Official duty station:** The city/town, county, and state in which an employee works and the surrounding area within a 50-mile radius that is used to determine whether travel is outside the limits of the official duty station, for purposes of this guidance.
- M. **Overtime:** Overtime pay provided under title 5, United States Code, is pay for hours of work officially ordered or approved in excess of 8 hours in a day or 40 hours in an administrative workweek.
- N. **Premium pay:** Additional pay authorized by Title 5 U.S. Code for overtime (including the dollar value of compensatory time earned in lieu of paid overtime), night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, or availability duty.
- O. **Rate of basic pay:** The rate of pay fixed by law or administrative action for the position held by an employee, including any applicable locality payment, special rate supplement, or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind.
- P. **Regular working hours:** The days and hours of an employee’s regularly scheduled administrative workweek.
- Q. **Regularly scheduled administrative workweek:** For full-time employees, the period within an administrative workweek when regularly required to be on duty (normally Monday through Friday, but it can be any 5 or 6 consecutive days of the administrative workweek and may include regularly scheduled overtime). For part-time employees, the officially prescribed days and hours within an administrative workweek when regularly scheduled to work as reflected on the current Notification of Personnel Action, Standard Form (SF) 50.
- R. **Regularly scheduled overtime:** Generally, overtime hours scheduled in advance of the beginning of the administrative workweek.

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- S. **Regularly Scheduled Tour of Duty:** Hours of a day (daily tour-of-duty) and the days of an administrative workweek (weekly tour-of-duty) constituting an employee’s regularly scheduled administrative workweek.
- T. **Sunday work:** Non-Overtime work performed during a regularly scheduled, daily tour of duty, any part of which is on a Sunday.
- U. **Travel:** Officially authorized travel, i.e. (travel for work purposes approved by an authorized BPA official).
- V. **Workday:** For purposes of this HR Desk Reference, the period between the commencement of the principal activities an employee is engaged to perform and the cessation of principal activities for that day. The workday is not limited to a calendar day or any other 24-hour period. The daily tour-of-duty whether it falls entirely within the same calendar day or not.

## 1.6 Acronyms

|             |   |
|-------------|---|
| <b>AUO</b>  | Administratively Uncontrollable Overtime                        |
| <b>CBA</b>  | Collective Bargaining Agreement                                 |
| <b>CFR</b>  | Code of Federal Regulations                                     |
| <b>COLA</b> | Cost of Living Allowance  |
| <b>COO</b>  | Chief Operating Officer   |
| <b>CPTC</b> | Columbia Power Trades Council                                   |
| <b>ELES</b> | Employee Earnings and Leave Statement                           |
| <b>EO</b>   | Executive Order   |
| <b>FLSA</b> | Fair Labor Standards Act  |
| <b>GS</b>   | General Schedule  |
| <b>HRSC</b> | Human Resources Service Center                                  |
| <b>HRD</b>  | Human Resources Director  |
| <b>MOU</b>  | Memorandum of Understanding                                     |
| <b>OPM</b>  | Office Personnel Management                                     |
| <b>PDL</b>  | Professional Division of Labor’s International Union, Local 335 |
| <b>SF</b>   | Standard Form   |
| <b>SOP</b>  | Standard Operating Procedures                                   |
| <b>TDY</b>  | Temporary Duty  |
| <b>TRC</b>  | Time Reporting Code   |
| <b>USC</b>  | United States Code  |
| <b>VRA</b>  | Veterans’ Recruitment Appointment                               |

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## 1.7 Roles and Responsibilities

A. **BPA Administrator or COO:** Authorizes waivers to the bi-weekly pay cap for premium pay earned in connection with an emergency.

B. **Human Resources Director (HRD) or his/her delegate:**

1. Determines FLSA status for all positions during the classification process;
2. Provides expert advice and guidance concerning payment of overtime, compensatory time, or other premium pay for hours of work based on FLSA or OPM regulations Title 5 rules and Department of Energy directives;
3. Advises employees and management on the avenues of review for FLSA pay claims and adjudicates claims filed with BPA; and
4. Reviews waivers to the bi-weekly pay cap and recommending approval or disapproval to the COO.

C. **Managers/Supervisors:**

1. Monitor to ensure overtime/compensatory time worked by employees is ordered, scheduled and approved within the required automated HRMIS form;
2. Ensure overtime is authorized, approved on the automated HRMIS form, and costs controlled in an effective manner;
3. Ensure compensatory time and overtime earned and used is recorded in accordance with BPA's time and labor reporting instructions;
4. Approve requests to earn compensatory time off for religious observances; and
5. Manage work and ensure that overtime is required only to avoid a serious backlog of work, or to meet a special requirement or unforeseen development.

D. **Employees:**

Follow procedures for overtime/compensatory and automated form approval in HRMIS.

## 2. Program Administration Requirements and Guidance

### 2.1 Hours of Work for Overtime Entitlement under FLSA

A. **General:**

1. FLSA overtime entitlement requires an initial determination that activities performed qualify as "hours of work". Hours of work performed at night, on Sunday, or on a legal holiday that entitles an employee to premium pay are included in calculating the number of hours worked as part of a daily, weekly, or bi-weekly work requirement and in determining entitlement to overtime for hours worked in

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excess of the work requirement. Once this threshold determination is made, “overtime” is based on whether the time spent performing the work is in excess of the number of hours in the employee’s basic work requirement.

2. All time spent by a non-exempt employee performing an activity for the benefit of BPA and under its control or direction is “hours of work” for pay purposes. This includes time during which an employee is required to be on duty; time during which an employee is “suffered or permitted” to work; and waiting or idle time which is under the control and for the benefit of the agency.
3. Time spent by an exempt employee performing “principal activities” is hours of work for overtime purposes when ordered and approved in writing by a manager with delegated authority to order and approve overtime. Principal activities are those activities which an employee is employed to perform. In certain cases, pre- and post-shift activity that is closely related and indispensable to an employee’s principal activities is also considered hours of work, such as for employees on rotating shifts.
4. Time in a paid leave status, including authorized absence on leave, credit hours, compensatory time off, a legal holiday, or other non-workday established by an Executive Order (EO) or administrative order authorized by BPA, e.g., one-half day or full day off for Christmas Eve by Executive Order, is treated as hours of work for purposes of determining overtime entitlement for FLSA purposes.
5. Time in an unpaid absence status, e.g., leave without pay, absence without leave, suspensions is not counted as hours of work for purposes of determining overtime entitlement. Any overtime hours performed during an administrative workweek during which there is also a period of unpaid absence will be substituted for the absence and paid at the employee’s rate of basic pay until the number of hours in the employee’s basic work requirement is satisfied. Remaining hours in excess of the basic work requirement will be paid as overtime or compensatory time off after the basic work requirement has been met.
6. All time spent by an employee between the start and cessation of principal activities for that day is considered hours of work. Any authorized rest period of 20 minutes or less is included.
7. In some cases per 5 CFR 551.412, activities that are indispensable and preparatory or concluding to an employee’s principal activities will be credited as hours of work. In those cases, the time period for the employee to perform preparatory or concluding activities must be scheduled by BPA. Only that amount of time scheduled will be credited as hours worked.
8. Bona fide meal periods and sleep periods are not considered hours of work except in limited circumstances as provided for in 5 CFR 551.411 and 5 CFR 551.432.

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9. 24-hour shifts on irregular or occasional standby duty who are not receiving annual premium pay (as described in 5 CFR, Part 550.112(m) (3). This time is considered hours of work when employees performing irregular or occasional standby duty are required to perform work during a meal or sleep period. If a sleep or meal period is interrupted by a call to duty, the time spent on duty is hours of work.
10. Whether time is credited as hours of work is also determined by considering provisions of law, Comptroller General decisions, OPM decisions and policy guidance, negotiated agreements, 5 CFR, Part 550 (for hours of work for travel) and 5 CFR, Part 410 (for hours of work for training).

**B. Hours of work for Travel Time for Non-Exempt Employees:**

1. The guidance in this Section relates only to whether travel time is considered “hours of work” under FLSA. For guidance on compensatory time off for travel outside duty hours that does not qualify as “hours of work” under FLSA, Title 5 rules, refer to HR Desk Reference 410-05-03: Compensatory Time Off for Travel.
2. Time spent traveling is considered “hours of work” under FLSA, when an employee is required to:
  - a) Travel during regular working hours (i.e., during the regularly scheduled administrative workweek);
  - b) Drive a vehicle or perform other work while traveling;
  - c) Travel as a passenger on a one-day assignment away from the official duty station; or
  - d) Travel as a passenger on an overnight assignment away from the official duty station on non-workdays during hours that correspond to the employee’s regular working hours.
3. An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal “home to work” travel that is not considered hours of work.
4. An employee traveling directly from home to a temporary duty location outside the limits of the official duty station will have normal home to work commute time deducted from hours of work when B.2 or B.3 above is applicable.
5. An employee who is permitted to travel using an alternative mode of transportation, or at a time other than that selected by the agency, shall be credited with the lesser of:
  - a) Actual travel time qualifying as hours of work under this Section; or

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- b) Estimated travel time that would have been considered hours of work under this guidance had the employee used the offered mode of transportation, or traveled at a time selected by the agency.

**C. Time Spent Traveling for Exempt Employees:**

1. Travel away from an employee’s official duty station is hours of work only when the travel:
  - a) Is within employee’s regularly scheduled administrative workweek, including regularly scheduled overtime work; or
  - b) Is outside the hours of employee’s regularly scheduled administrative workweek, is ordered or approved, and meets one of the following conditions:
    - i) Involves performance of actual work while traveling, e.g., flying an airplane to transport cargo;
    - ii) Is incident to travel involving performance of work while traveling, e.g., returning an empty aircraft to the point of origin;
    - iii) Is carried out under such arduous and unusual conditions that the travel is inseparable from work, e.g., travel on rough terrain or under extremely severe weather conditions; or
    - iv) Results from an event which could not be scheduled or controlled administratively by the government, e.g., training scheduled solely by a private firm, or a job-related court appearance required by a court subpoena, including travel to the event and return to the official duty station.
2. Travel from home to work at a temporary duty location within the employee’s official duty station is not hours of work, unless the employee is required to perform substantial work while commuting. Driving a government owned or leased vehicle is not a basis for determining that the commuting time is hours of work.
3. Travel directly between home and a temporary duty location outside the official duty station that qualifies as hours of work as outlined in paragraph C.1. above, requires deduction of the employee's normal commute time from the total compensable hours of work.
4. Travel time potentially compensable under paragraphs above must be documented and approved by the appropriate manager, prior to beginning travel. HRSC should be consulted in advance to assist in determining whether travel is compensable to prevent false employee expectations. If not compensable and if possible, the employee’s travel should be rescheduled to occur during regularly scheduled duty hours. An employee’s work schedule may not be adjusted solely for the purpose of including travel time as compensable hours of work.

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5. Employees should not be required to travel during non-duty hours insofar as practicable. Pursuant to some Collective Bargaining Agreements (CBAs), the manager may be required to provide written reasons for ordering travel outside of duty hours when such travel does not qualify for overtime pay.
6. Time spent traveling to a temporary duty location outside the limits of the official duty station that is NOT compensable under paragraph C.1 above, may be eligible for compensatory time off for Travel (not overtime) under the rules described in HR Desk Reference: Compensatory Time Off for Travel.
7. Appendix B, "Further Guidance for Determining Hours of Work While in a Travel Status", provides examples and discussion for determining when time in a travel status may be compensable as hours of work.

**D. Time spent in training or attending a lecture, meeting, or a conference for non-exempt employees:**

1. Time spent in training during regular work hours is considered hours of work.
2. Time spent in training outside regular working hours is considered hours of work, if BPA directs the employee to participate and the purpose of the training is to improve the employee's performance of the duties and responsibilities of his or her current position. For purposes of this provision, "directed to participate" means that the training is required by BPA and the employee's performance or continued retention in his or her current position will be adversely affected by non-enrollment. Also, for purposes of this provision, "to improve the employee's performance... of his or her current position" does not include upward mobility training or developmental training needed for a subsequent position in the same career field.
3. Time spent outside regular work hours in apprenticeship or other entry-level training, or internship or other career-related work-study training, or training under the Veterans' Recruitment Appointment (VRA), is not considered hours of work unless productive work is performed during such periods. However, an employee given training during a period of duty for which he/she is already receiving overtime pay may continue to receive that pay.
4. Time spent by an employee performing work for BPA during a period of training, will be considered hours of work.
5. Time spent within the agency's allowance of preparation time for attendance at training is considered hours of work, if it occurs during an employee's regular working hours. Preparatory time outside regular working hours is considered hours of work, if the training is required as discussed above.
6. Time spent attending a lecture, meeting, or conference is considered hours of work, if it occurs during an employee's regular working hours. If outside regular working

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hours it will be considered hours of work, if BPA has directed the employee to attend the event, or if the employee performs work for the benefit of BPA while attending.

**E. Time spent adjusting grievances or performing representational functions for non-exempt employees:**

1. Time spent by an employee adjusting his or her grievance or other appealable action during the time the employee is otherwise required to be on the agency premises is considered hours of work.
2. "Official time" granted to an employee by BPA to perform representational functions during those hours when the employee is otherwise in a duty status is considered hours of work. This includes time spent by an employee performing such functions during regular working hours and regularly scheduled overtime hours. If such an employee is working irregular, unscheduled overtime work and an event occurs that is connected to representational duties that must be dealt with during those hours, the time spent doing so is also considered hours of work.

**F. Time spent receiving medical attention for non-exempt employees:**

1. Time spent waiting for and receiving medical attention for illness or injury will be considered hours of work, if medical attention is required on a workday in which the employee reported for duty and subsequently became ill due to a working condition, or was injured on the job.
2. The time spent receiving medical attention occurs during the employee's regular working hours; and the employee receives the medical attention on BPA's premises or at the direction of BPA at a medical facility away from the Administration's premises.

**G. Time spent taking a physical examination for non-exempt employees:** When an employee's position requires taking a physical examination, for the employee's continued employment with BPA will be considered hours of work.

**H. Time spent in standby duty or in an on-call status for exempt and non-exempt employees:**

1. Time spent on standby duty is considered "hours of work", if the employee is restricted to a designated duty station, and is assigned to be in a state of readiness to perform work.
2. Limitations imposed on the employee's activities must be so substantial that the employee cannot use the time for his/her own purposes. In determining whether an employee's activities are "substantially limited" for purposes of this section, personal limitations intended to ensure the employee's readiness to perform work

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cannot be considered, e.g., restrictions on consumption of alcohol or certain medications.

3. Employee is not on duty and time spent in an on-call status is not hours of work, if the employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or the employee is allowed to make arrangements for another person to perform any work that may arise during the on-call period.

**I. Training for Exempt Employees:**

1. Training during an employee’s regularly scheduled tour-of-duty is considered “hours of work.”
2. Exempt employees may not earn overtime or any other premium pay while engaged in training by, in, or through government or non-government facilities with the following exceptions:
  - a) An employee in training during a period of duty for which he/she is already receiving overtime pay will continue to receive it. This does not apply to an employee assigned to full-time training at institutions of higher learning.
  - b) Pay for regularly scheduled overtime and annual premium pay will be continued when an employee is absent due to a training assignment.
3. Exempt employees assigned to full-time training at an institution of higher learning may not receive any form of premium pay, including overtime or compensatory time in lieu of overtime, under any circumstances. If applicable, managers should notify employees in advance of such training.
4. Premium pay restrictions while in training status do not apply to paying overtime, travel compensatory time off, or other premium pay for time spent traveling to and from training, if such time is otherwise eligible.

**2.2 Overtime for a Non-Exempt Employee**

**A. Overtime – Purpose and Determination of Overtime Hours Entitlement:** All time considered hours of work under FLSA, as summarized in Section 08.01-08.08, “Hours of Work under FLSA”, will be used to determine an employee’s entitlement to FLSA overtime or compensatory time in lieu of overtime.

1. **Hours of Work under Title 5:** In some cases, certain “hours of work” in excess of 8 hours in a day, or 40 hours in a week, are compensable under Title 5, but not under FLSA. In those cases, a FLSA non-exempt employee is entitled to be compensated for those hours but at his/her FLSA overtime rate.

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- a) For example, time spent traveling under such arduous and an unusual condition that the travel is inseparable from work is compensable under OPM regulations in 5 CFR, Part 550, but not under FLSA regulations. A FLSA non-exempt employee who performs such work would be entitled to overtime based on Title 5, but would be compensated at the FLSA hourly overtime rate. Specially, this HR Desk Reference “Overtime and Compensatory Time (Annual Employees) & Religious Compensatory Time (Annual and Hourly Employees) should be read in conjunction with this guidance.
- b) [Appendix A](#) summarizes the applicability of various overtime and compensatory time rules based on FLSA exemption status.
2. **Purpose of overtime:** Overtime should be required only to avoid a serious backlog of work, to meet a special work requirement, or to address unexpected and unforeseen work requirements. Managers should generally not authorize and approve overtime on the same day that an employee takes leave.
3. **Regular and flexi-schedules:** FLSA non-exempt employees on a BPA regular schedule or a BPA flexi-schedule have a basic work requirement of 8 hours per day and 40 hours per week. Overtime hours for both full-time and part-time employees are those in excess of 8 in a day or 40 in a week. Credit hours worked at the election of the employee on a flexible work schedule are not overtime hours because they are requested by the employee (rather than ordered by management).
4. **Compressed Work Schedules:** Overtime hours are those hours in excess of an employee’s scheduled daily, weekly or bi-weekly work requirement. *BPA established CWS for annual employees, including CWS for 12-hour rotating shift work groups, are located in the [BPA Policy Library](#).*
- a) For full-time employees on a 4/10 compressed work schedule, the basic work requirement is 10 hours per day, 40 hours per week, and 80 hours per bi-weekly pay period. Therefore, overtime hours are those in excess of 10 hours per day, 40 hours per week, or 80 hours bi-weekly.
- b) For full-time employees on a 5-4/9 compressed schedule, the basic work requirement consists of eight 9-hour days and one 8-hour day for a total of 80 hours in the bi-weekly period.
- c) For part-time employees on a compressed schedule, overtime hours are those that would be considered overtime hours for a full-time employee on the same compressed schedule, but always in excess of 8 hours in a day or 40 hours in a week.
5. **Quick Turnaround Shifts:** If an employee has two scheduled daily tours of duty that fall on the same calendar day, e.g., Monday from 4:00 a.m. to 12:30 p.m., followed by another 8-hour tour from Monday at 10:00 p.m. to 6:30 a.m. on Tuesday, the

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hours of work are considered two separate workdays and the employee is not entitled to overtime for the hours during the second tour of duty that fall within the same calendar day as the first 8-hour tour of duty.

**B. Overtime — scheduling and approval:**

1. **Suffered and permitted overtime:** Overtime must be authorized and approved in advance before the work is performed; however, non-exempt employees (except those on flexible work schedules) must be compensated for suffered or permitted overtime. Employees on flexible work schedules may be compensated by flexing the schedule within the same pay period.
  - a) “Suffered or permitted” is overtime that is not ordered or approved, but the manager knew or should have known the work was being performed and took no action to stop it. This would include, for example, work performed before or after an employee’s designated tour of duty or during his/her designated lunch period.
  - b) It is the duty of BPA managers to ensure that overtime work is not performed solely at the initiative of the employee. A manager who observes or has reason to believe a non-exempt employee is working overtime hours without authorization must direct the employee to cease.
  - c) An employee may be disciplined for performing overtime work against the express order of his/her supervisor. Similarly, a supervisor may be disciplined for allowing “suffered and permitted” overtime to continue unabated.

**2. Regularly scheduled and irregular or occasional overtime:**

Overtime hours scheduled in advance of the beginning of the administrative workweek are considered regularly scheduled. Overtime hours scheduled after the beginning of the administrative workweek are considered irregular and occasional. However, failure to schedule known requirements for overtime in advance of the beginning of the administrative workweek does not make it irregular and occasional.

**3. Callback overtime:**

- a) Irregular or occasional overtime work performed by an employee on a non-scheduled workday or for which the employee is required to return to the worksite (“callback” overtime) is deemed to be at least two hours in duration for overtime pay purposes, including compensatory time off in lieu of overtime pay.
- b) An employee returning to the worksite to perform unscheduled overtime receives a minimum of two hours of overtime pay for each separate time the employee must return to the worksite. The two hour minimum does not apply to unscheduled overtime performed as an adjunct to an employee’s scheduled tour of duty, e.g., just prior to or at the end of the scheduled workday, or when it

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is performed by telephone. In the latter cases (adjunct or by telephone), the employee receives overtime pay only for hours actually worked.

- c) Overtime at a non-worksites while on TDY or Working from Home must be expressly ordered and approved by an employee’s manager. Overtime is paid for actual hours worked as it does not constitute “callback” overtime subject to the 2-hour minimum rule.

**4. Overtime — pay rates and pay limits:**

- a) **Overtime Rate:** A non-exempt employee’s overtime entitlement includes the straight time rate of pay, times all overtime hours worked, plus one-half times the employee’s hourly regular rate, times all overtime hours worked.
- b) **The “straight time” rate:** Includes basic pay, plus applicable locality pay and/or special salary rates and/or non-foreign cost of living allowance (COLA). When applicable, the straight time rate of pay also includes annual premium pay for employees with standby duty and/or administratively uncontrollable overtime (AUO).
- c) **Additional pay:** Such as premium pay, differentials, cash awards and bonuses— is not included. The hourly “regular” rate of pay is based on total remuneration which does include additional pay such as night differential, Sunday premium pay, holiday pay, locality pay, cost of living allowance, post or hazard pay differentials, and nondiscretionary bonuses. Performance-based cash awards are not “nondiscretionary bonuses” under the regulations nor are cash awards for employee suggestions.
- d) **Earnings limitations:** There is no limitation on the hourly rate of overtime pay under FLSA nor do the maximum bi-weekly or annual earnings limitations applicable to Title 5 pay apply to FLSA overtime pay. FLSA overtime pay is excluded from the calculation of “aggregate compensation” under the aggregate limitation on pay found in 5 CFR, Part 530.

**2.3 Paid Overtime for Exempt Annual Employees**

**A. Purpose and determination of overtime hours:**

- 1. **Hours of work:** Used to determine entitlement to overtime or compensatory time in lieu of overtime.
- 2. **Purpose of overtime:** Overtime should be required only to avoid a serious backlog of work, to meet a special work requirement, or to address unexpected and unforeseen work requirements.

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3. **Overtime pay may only be earned when actually worked:** An employee absent on paid leave during regularly scheduled overtime will not receive overtime pay (or compensatory time in lieu of overtime) for the period of absence.
4. **Work on a holiday:** Work performed on a holiday during an employee’s regular duty hours is not overtime, it is holiday work. Holiday work creates an entitlement to holiday premium pay. Work on a holiday outside of regular duty hours and in excess of an employee’s basic work requirement is compensated as overtime or compensatory time in lieu of overtime.
5. **Only officially ordered or approved hours worked in excess of the basic daily, weekly, or bi-weekly work requirement can be paid as overtime or compensatory time off:** The concept of “suffered or permitted” overtime applicable to FLSA non-exempt employees does not apply to exempt employees. Additional hours of work performed voluntarily by an exempt employee that are not officially ordered or approved may not be compensated with overtime premium pay or compensatory time in lieu of overtime; however, some CBA’s allow compensation for voluntary “overtime” when the manager with delegated authority determines it was needed and justified. Consult the applicable CBA as needed. An employee who voluntarily works additional hours that are not compensable as overtime or compensatory time may earn credit hours if on a flexi-schedule (see HR Directive 410-06: Employee Leave, Work Schedules, and Telework).
6. **Regular and flexi-schedules:** Employees on a regular or flexi-schedule have a basic work requirement of 8 hours per day and 40 hours per week. Overtime hours for both full-time and part-time employees are those in excess of 8 hours in a day or 40 hours in a week. Credit hours worked at the election of the employee on a flexible work schedule are not overtime hours because they are requested by the employee (rather than ordered by management).
7. **Compressed work schedules:** For full-time employees on a 4/10 compressed work schedule the basic work requirement is 10 hours per day, 40 hours per week, and 80 hours in a bi-weekly period. Therefore, overtime hours are those hours of work in excess of 10 hours per day, 40 hours per week, or 80 hours bi-weekly. For full-time employees on a 5/4-9 compressed work schedule, the basic work requirement consists of eight 9-hour days and one 8-hour day for a total of 80 hours in a bi-weekly period. Overtime hours are those hours in excess of an employee’s scheduled daily, weekly or bi-weekly work requirement. For part-time employees on a compressed work schedule, overtime hours are those considered overtime hours for a full-time employee on the same compressed schedule, but always more than 8 hours in a day or 40 hours in a week. *(Note: BPA established CWS for annual employees, including CWS for 12-hour rotating shift work groups, are located in the [BPA Policy Library](#))*

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8. **Quick turnaround shifts:** If an employee has two scheduled daily tours of duty falling on the same calendar day, e.g., Monday from 4:00 a.m. to 12:30 p.m. followed by another 8-hour tour from Monday at 10:00 p.m. to 6:30 a.m. on Tuesday, the hours of work are considered two separate workdays and the employee is not entitled to overtime for the hours during the second tour-of-duty that fall within the same calendar day as the first 8-hour tour-of-duty.

**B. Scheduling and approval:**

1. **Requirement to work overtime:** Managers (or Team Leaders with delegated authority) may require employees to work overtime as necessary to accomplish work. An employee may request to be relieved of a requirement to work overtime, but may not refuse. Failure to work directed overtime may result in disciplinary action.
2. **Overtime and leave:** Managers should not approve annual leave on the same day that an employee is required to work overtime, unless specific management requirements or bona fide employee emergencies arise.
3. **Regularly scheduled and irregular or occasional overtime:** Overtime hours scheduled in advance of the beginning of an administrative workweek are considered “regularly scheduled”. Overtime hours scheduled after the beginning of an administrative workweek are “irregular or occasional”. However, failure to schedule known requirements for overtime in advance of the beginning of the administrative workweek does not make it “irregular or occasional”.
4. **Alternatives to regularly scheduled overtime:** Workload demands met by regularly scheduled overtime might alternatively be met by rescheduling the daily or weekly tour-of-duty for some or all unit employees. For example, if overtime is regularly scheduled for Saturdays because of work that can only be completed on that day, the workweek for employees could be rescheduled from Monday through Friday to Tuesday through Saturday. Similarly, if overtime is regularly scheduled for early morning or evening hours to staff a desk or perform end of day tasks, consideration could be given to changing shift beginning and ending times. HR Directive 410-06: Employee Leave, Work Schedules, and Telework provides guidance on establishing tours of duty. Additional guidance for bargaining unit employees may be found in the applicable CBA.
5. **Callback overtime:** Irregular or occasional overtime work performed by an employee on a non-scheduled workday, or for which the employee is required to return to the worksite, is deemed to be at least two hours in duration for purposes of overtime pay, including compensatory time off in lieu of overtime pay. An employee returning to the worksite to perform unscheduled overtime receives a minimum of two hours overtime pay for each separate time the employee must return to the worksite. The two hour minimum does not apply to unscheduled

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overtime performed as an adjunct to an employee’s scheduled tour-of-duty, e.g., just prior to or at the end of the scheduled workday or when it is performed by telephone. In the latter cases, i.e., adjunct or by telephone, the employee receives overtime pay only for hours actually worked.

6. **Standby Duty:** An employee assigned regularly scheduled standby duty for which annual premium pay is granted may not receive overtime pay for hours of work in excess of 8 hours in a day (see [5 CFR, Part 550.141](#))
7. **Non-worksite:** Overtime at a non-worksite while on Temporary Duty (TDY) or Working from Home, e.g., in temporary lodging while traveling or from home, must be ordered or approved by an employee’s manager. Overtime is paid only for actual hours worked as it does not constitute “callback” overtime subject to the 2-hour minimum rule.
8. **Increments for scheduling/paying overtime:** For regularly scheduled overtime, an employee will be paid for each minute worked; however, work should be scheduled in no less than 15-minute increments for ease of administration. For occasional and irregular overtime work, an employee will be compensated in increments of 15 minutes, with 8 or more minutes of overtime rounding up to 15 minutes, and 7 minutes or less disregarded.
9. **Meal periods during overtime:** Periods of overtime of 6 hours or more should have a scheduled meal period of 30 minutes for every 6 hour period. A meal period can be shortened or eliminated if determined to be impracticable by the authorizing manager and must be indicated as such on the employee’s timesheet.

**C. Overtime pay rates and pay limits:**

1. **Overtime rate:** An employee whose rate of basic pay is equal to or less than GS-10 step 1 will be paid overtime at a rate of one and one-half times his/her actual hourly rate of basic pay. An employee whose rate of basic pay is greater than GS-10 step 1 will be paid the greater of one and one-half times the hourly rate for GS-10 step 1 or his/her actual hourly rate of pay.
2. **Overtime performed on a Sunday or a holiday:** Paid at the same overtime premium pay rate as overtime work performed on any other day.
3. **Bi-weekly pay cap:** Limits the amount of premium payable to an exempt employee. An exempt employee’s total pay (including basic pay, overtime, night differential, holiday premium pay, Sunday premium pay, and standby duty pay) for any bi-weekly period may not exceed GS-15, step 10, including applicable locality pay or special rate supplement, or the rate payable for Executive Schedule level EX-V, whichever is greater. The imputed value of compensatory time earned in lieu of overtime is included in the computation of employee pay subject to the bi-weekly pay cap.

[OPM’s Bi-Weekly Pay Caps.](#)

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4. **Annualized pay cap:** The COO may approve an annual premium pay cap instead of a bi-weekly pay cap for first responders for recurring emergency situations, such as major power outages due to severe weather conditions. Waivers for one-of-a-kind situations require DOE approval. An annualized pay cap permits payment of premium pay if the total pay, i.e., basic pay and premium pay, for the calendar year does not exceed the greater of the annual rate for GS-15, step 10, including any special salary rate or locality rate of pay, or level V of the Executive Schedule. Contact HRSC for further guidance on the procedures for requesting waiver of the Bi-weekly Pay Cap.

## 2.4 Compensatory Time for Non-Exempt Employee

- A. **Eligibility:** Generally, compensatory time in lieu of overtime pay may be granted at the request of a non-exempt employee. However, a non-exempt employee who works regularly scheduled overtime may not be granted compensatory time in lieu of overtime pay unless the employee is on a flexible work schedule.
- B. **When earned:** Compensatory time may only be granted for hours of work that qualify as overtime hours. Note that there is a separate type of compensatory time off for time spent in a travel status that is governed by the regulations in CFR, Part 550, Subpart N, and is subject to different rules than those described within this guidance. Also, an employee may request to work compensatory time in order to make up for time lost due to religious observances. This type of compensatory time is also governed by the regulations in CFR, Part 550, Subpart J. See Chapter 2 “Compensatory Time Off for Travel outside Duty Hours and for Religious Observances”.
- C. **Employee requests for compensatory time:** A FLSA non-exempt employee may never be ordered or directed to take compensatory time in lieu of overtime pay. However, when a FLSA non-exempt employee requests compensatory time in lieu of overtime, the request should usually be granted. Some Collective Bargaining Agreements establish the right of employees to request compensatory time in lieu of overtime, but eligibility is always subject to the requirements of FLSA.
- D. **Scheduling and crediting compensatory time:** The amount of compensatory time earned in lieu of overtime is in an amount equal to the overtime hours worked, i.e., hour for hour. The increments for scheduling and crediting compensatory time are the same as those for overtime.
- E. **Time limits for using compensatory time:** Compensatory time earned under FLSA must be taken by the end of the 26th pay period after the pay period during which it was earned. If it is not used within this timeframe, the employee will be paid for the unused hours at the overtime rate in effect at the time it was earned.

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- F. **Scheduling the use of compensatory time:** An employee must use compensatory time before using annual leave, unless the use of accrued compensatory time will result in the forfeiture of use-or-lose annual leave.
- G. **Cashing out compensatory time upon separation, transfer, or LWOP:** An employee with an unused compensatory time balance who separates from federal employment, transfers to another agency, moves to another DOE agency outside of BPA, is separated or placed in a leave without pay status to perform service in the uniformed services, or is separated or placed on leave without pay because of an on-the-job injury with entitlement to injury compensation will be paid for the unused hours at the overtime rate in effect at the time it was earned.
- H. **Rate of overtime pay upon cashing out:** Unused compensatory time is subject to the policy or regulations under which it was earned, regardless of current FLSA status. For example, an employee earning compensatory time while non-exempt would have that time cashed out at the FLSA overtime rate even if the employee is FLSA exempt at the time it is cashed out.
- I. **Employee rights:** No employee may attempt to directly or indirectly intimidate, threaten, or coerce any other employee to interfere with his/her right to request or not request compensatory time off in lieu of overtime pay.

## 2.5 Compensatory Time in lieu of Paid Overtime for Exempt Employee

- A. **Relation to overtime:** Compensatory time off refers to time off from duty in lieu of payment for overtime. Other forms of compensatory time off, i.e., for travel and for religious observances) are not subject to the rules in this section. Compensatory time off in lieu of overtime premium pay may be earned for hours of work qualifying as overtime hours. (See HR Desk Reference 410-05-03: Compensatory Time Off for Travel and HR Desk 410-05-04: Reference Compensatory Time for Religious Observances)
- B. **Eligibility:** At an employee’s request, compensatory time off may be granted in lieu of overtime premium pay for irregular or occasional overtime work. Except for employees on flexible work schedules, an employee working regularly scheduled overtime must be paid overtime premium pay –compensatory time off in lieu of overtime premium pay cannot be granted. An employee on a flexible work schedule may, upon request, be granted compensatory time off in lieu of overtime premium pay whether overtime is irregular/occasional or regularly scheduled.
- C. **Employee requests for compensatory time:** Subject to the eligibility requirements above, managers should normally approve requests for compensatory time in lieu of paid overtime. Some CBAs may establish a right for their bargaining unit members to request compensatory time off in lieu of paid overtime, but eligibility is still subject to the provisions provided above.

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- D. **Scheduling and crediting compensatory time:** The amount of compensatory time off earned in lieu of overtime premium pay is in an amount equal to the overtime hours worked, i.e., hour for hour. The increments for scheduling, earning, and crediting comp time off are the same as those for overtime. For “callback overtime” the amount of compensatory time off to which an employee is entitled is a minimum of two hours.
- E. **Time limits for using compensatory time off:** Compensatory time off earned in lieu of overtime must be taken by the end of the 26th pay period after the pay period in which it was earned. If it is not used within this timeframe, BPA’s policy is to cash out the unused hours at the overtime premium pay rate the employee would have received at the time the compensatory time off was earned.
- F. **Using compensatory time off:** An employee must use compensatory time off before using annual leave, unless using accrued compensatory time off will result in the forfeiture of use-or-lose annual leave. Compensatory time balances are maintained in the payroll system and provided in the employee’s leave balances (in HRmis and/or on the Employee Leave and Earning Statement (ELES)).
- G. **Cashing out compensatory time off upon separation, transfer, or LWOP:** In accordance with BPA policy, an employee with unused compensatory time off who separates from federal employment, transfers to another agency, or moves to another DOE agency outside BPA will be paid for unused compensatory time off hours at the overtime premium rate to which he/she was entitled when it was earned. In accordance with non-discretionary government-wide regulations, an employee separated or placed in a leave without pay status to perform service in the uniformed services, or who is separated or placed on leave without pay because of an on-the-job injury with entitlement to compensation from the Office of Workers Compensation, will be paid for the unused compensatory time hours at the overtime premium pay rate to which he/she was entitled when it was earned.
- H. **Rate of overtime pay upon cash out:** An employee’s unused compensatory time off is subject to the policy or regulations under which it was earned, regardless of the employee’s current FLSA status. For example, an employee who earned compensatory time while non-exempt would have that compensatory time liquidated at the FLSA overtime rate as described in 5 CFR, Part 551, even if he/she is FLSA exempt at the time it is liquidated.
- I. **Compensatory time off and the bi-weekly or annual pay cap:** The imputed value of compensatory time off (calculated at employee’s overtime premium pay rate) is counted in the computation of employee pay subject to the bi-weekly pay cap, as described above.
- J. **Overtime Pay, Compensatory Time Off, and CBA’s:** If the employee is covered by the American Federation of Government Employees (AFGE) CBA or by the Professional

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Division of Laborers International Union (PDL) CBA, the employee, at his/her option may elect compensatory time off in lieu of paid overtime.

### 3. Processes and Procedures

#### A. Scheduling and recording overtime:

1. Regularly scheduled overtime is scheduled and approved in the required automated form within HRMIS, prior to the administrative workweek in which it will be performed (regularly scheduled overtime). The authorizing official must provide employees, in writing, the specific hours of overtime to be worked.
2. All regularly scheduled overtime must be requested and approved on the automated HRMIS form and documented on the time and labor reporting sheet.
3. To request irregular or occasional overtime (or compensatory time earned) resulting from unexpected circumstances, a verbal request should be submitted prior for manager approval. The request must be followed up with submission and approval of the required automated form in HRMIS and on the Time and Attendance record. No employee may authorize or approve his/her own overtime work. CBAs should be consulted for applicable overtime scheduling and/or approval requirements.

#### B. Increments for scheduling/paying overtime for Non-Exempt Employees:

1. For regularly scheduled overtime, an employee will be compensated for every minute worked; however, work should be scheduled in no less than 15-minute increments for ease of administration.
2. For occasional or irregular overtime work, an employee will be compensated in increments of 15 minutes. Periods of work of 8 minutes or more will be rounded up to 15 minutes for pay purposes. Periods of work of 7 minutes or less will be disregarded.

#### C. Scheduling and recording compensatory time:

1. All compensatory time earned and taken by an employee in lieu of paid overtime must be requested and approved on the automated recorded within HRMIS and documented on the time and labor reporting sheet.
2. An employee should request use of compensatory time in advance, when possible, by using the leave calendar or absence and leave request system in place in his/her organization. An employee without internet or e-mail access may submit OPM Form 71. Designated field employees, may document compensatory time usage on the applicable time and labor report.
3. Compensatory time balances are maintained in the payroll system and are recorded (used) in 15-minute increments for non-exempt employees.

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4. Compensatory time earned balances are maintained in BPAs Payroll system for exempt employees.

**D. FLSA overtime pay claims for non-exempt employees:**

1. A claim concerning entitlement to FLSA overtime pay for work performed is subject to a 2-year statute of limitations, except in cases of a willful violation where the statute of limitations is 3 years.
2. Claims may be filed with BPA, directly with OPM, or in the appropriate United States court. However, a grievance procedure is the exclusive administrative avenue of review for an employee covered by a bargaining agreement that does not exclude FLSA claims under the negotiated grievance procedure.
3. A claimant who initially files with BPA may still file a claim with OPM if the Agency’s decision is unfavorable. There is no further administrative review after OPM has adjudicated a claim. Neither BPA nor OPM will decide on a claim that is in litigation.
4. In order to “preserve the claim period”, a claimant or his/her designated representative must submit a written claim either to BPA or to OPM. The claimant is responsible for proving when the claim was received by the agency or OPM and must, therefore, retain documentation to establish the date received. The claimant should use certified, return receipt mail or request a written acknowledgement that the claim was received.
5. If a claim for back pay is established, the claimant will be entitled to pay for a period of up to two years (or three years for willful violations) back from the date the claim was received.
6. A claimant may designate a representative to assist in preparing or presenting his/her claim. The representative must be designated in writing. A representative who is a federal employee may be disallowed when the individual’s activities as a representative would cause a conflict of interest, when he/she cannot be released from official duties because of the priority needs of the Agency, or when releasing the representative would result in unreasonable costs to the Agency.

**4. Program Metrics, Standards, and/or Reporting**

The program metrics and reporting are functions performed by BPA’s Finance/Payroll Disbursement Office.

**5. Authorities & References**

- A. BPA HR Directive 410-5: Employee Pay and Compensation Incentives
- B. 5 U.S.C., Chapter 55, Pay Administration

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- C. 5 U.S.C., 6122, Flexible Schedules
- D. 5 U.S.C., Chapter 61, Hours of Work
- E. 5 U.S.C., Chapter 63, Leave
- F. 29 U.S.C., Chapter 8, Fair Labor Standards
- G. 5 CFR, Part 410, Subpart D, Paying for Training Expenses
- H. 5 CFR, Part 551, Pay Administration under the Fair Labor Standards Act
- I. 5 CFR, Part 550, Pay Administration (General)
- J. 5 CFR, Part 550, Subpart N
- K. 5 CFR, Part 530, Subpart B
- L. 5 CFR, Part 610, Hours of Duty
- M. [DOE Handbook on Overtime](#), February 2004
- N. American Federation of Government Employees, Local 928, Collective Bargaining Agreement
- O. Professional Division of Labor's (PDL) International Union, Local 335, Collective Bargaining Agreement
- P. Related HR Desk References:
  1. 410-05-02: Pay and Compensation for Exempt Annual Employees
  2. 410-05-03: Compensatory Time Off for Travel
  3. 410-05-04: Religious Compensatory Time
  4. 410-05-05: Premium Pay

## 6. Contacts

- A. Human Resources Service Center (HRSC), Employee and Labor Relations (HE) for information and procedures concerning earning overtime and earning/using compensatory time under the FLSA.
- B. Finance, Payroll Disbursement office for assistance with timesheets.
- C. HRSC, Recruitment & Placement (HA) for additional information concerning the required content of claims, claimant and Agency responsibilities, and the address for filing claims directly with OPM may also be found in 5 CFR, Part 551.
- D. For information on FMLA, contact the Leave Program, HRSC, through HR Help (HRHelp@bpa.gov), 503-230-3230.

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E. For assistance with timesheets, please contact Payroll Disbursement, Finance, 503-230-3993.

## 7. Revision History

This chart contains a history of the revisions and reviews made to this document.

| Version Number | Issue Date | Description of Change or Review   |
|----------------|------------|---|
| 1.0            | 1/1/2024   | Initial issuance. HR Desk Reference for Pay and Compensation for Exempt and Non-exempt employees. Change in process and procedures for request and approval of overtime (e.g., HRMIS automation of overtime approval). This HR Desk reference guide replaces HR Desk Reference 410-05-01, Pay and Compensation for Non-Exempt Annual Employees, dated 04/18/2016 and HR DRG 410-05-02, Pay and Compensation for Exempt Employees, dated 04/18/2023. |

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## Appendix A: Overtime, Compensatory & Premium Pay Rules

| FLSA STATUS | Hours of Work for Overtime Purposes  | Overtime Pay & Compensatory Time in Lieu of Overtime Pay | Compensatory Time Off for Travel Not Qualifying as Hours of Work for Overtime Purposes | Other Premium Pay, e.g., Sunday, Night, Holiday |
|-------------|--|--|--|---|
| Non-Exempt  | Rules in 5 CFR, Part 551, Subpart D; and applicable rules in 5 CFR, Part 550, Subpart A (see 550.101(c)) | Rules in 5 CFR, Part 551, Subpart E only                 | Rules in 5 CFR, Part 550, Subpart N only   | Rules in 5 CFR, Part 550, Subpart A only        |
| Exempt      | Rules in 5 CFR, Part 550, Subpart A only   | Rules in 5 CFR, Part 550, Subpart A only                 | Rules in 5 CFR, Part 550, Subpart N only   | Rules in 5 CFR, Part 550, Subpart A only        |

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# Appendix B: Guidance for Determining Hours of Work in a Travel Status for Exempt Annual Employees

This guidance is to be used only to determine whether time in a travel status is deemed to be compensable hours of duty under 5 CFR, Part 550, Subpart A. Employees who are exempt from the Fair Labor Standards Act (FLSA) are covered exclusively by these rules. For employees who are non-exempt from FLSA, travel time is credited if it is qualifying hours of work under either the rules in 5 CFR, Part 550, Subpart A, **OR** under OPM’s FLSA regulations in 5 CFR, Part 551, Subpart D.

Under 5 CFR, Part 550, Subpart A, time spent in travel status outside the employee’s official duty station is considered to be hours of duty (for pay purposes) only when:

- A. It is within the employee’s regularly scheduled workweek, including regularly scheduled overtime work; **OR**
- B. It is outside the employee’s regularly scheduled workweek **and** meets **one** of the following conditions:
  - 1. The travel involves performance of actual work while traveling;
  - 2. The travel is incident to travel that involves the performance of work while traveling;
  - 3. The travel is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
  - 4. The travel results from an event that could not be scheduled or controlled administratively, including travel of an employee to such an event and the return of the employee to his or her official duty station.

**C. Discussion and Examples**

- 1. Time spent in travel status is within the hours of the employee’s regularly scheduled workweek, including regularly scheduled overtime work.
  - a) Regularly scheduled tour-of-duty is defined as the work schedule that was scheduled by the manager in advance of the administrative workweek. A manager must make any changes to an employee's work schedule prior to the week for which the change in the work schedule applies in order for the change to be considered the employee’s regularly scheduled tour-of-duty (because the administrative workweek begins on Sunday, changes must be made by the Saturday prior to the Sunday that begins the administrative workweek). Regularly scheduled overtime hours are overtime hours that are scheduled in advance of the employee’s regularly scheduled administrative workweek.

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b) **Example:** On Friday, a manager scheduled an employee to work 3 hours of overtime on the following Monday and Wednesday (regularly scheduled overtime). If the employee were traveling during either of these two 3-hour periods, the travel time would be considered to be hours of work and would be compensable and paid at the overtime rate.

2. For purposes of this section, scheduled overtime must have been for the purpose of performing work in the employee’s assigned function and may not have been scheduled solely for the purpose of travel. Likewise, overtime work may not be scheduled to be accomplished while traveling unless it is work for which travel is an integral or incidental part of accomplishing the work as described in B or C below.

**D. Travel involves the performance of actual work while traveling**

1. The travel must require the employee to perform work that is integral to the functions, duties and responsibilities of his/her job.

**Example:** A photographer traveling to a temporary duty location as a passenger on an airplane while taking aerial photographs of transmission towers and/or lines as required by a job assignment would be performing work while traveling. An engineer whose job description requires him/her to develop construction engineering designs works on a design while in-route as a passenger on an airplane traveling to a temporary duty location would not meet the intent of B.1 on the previous page since the preparation of construction engineering designs does not require flying on an airplane. This example illustrates the principle that would apply to the vast majority of BPA employees.

2. **Travel is incidental to travel that involves the performance of work while traveling.** An employee will generally be in this situation when he/she is on a “deadhead” trip, either: (a) traveling to a destination to board a means of transportation upon which he/she will be performing work while traveling; or (b) having performed work while traveling and then returning to his/her official duty station.

**Example:** A pilot who, after completing his/her basic work requirement, is a passenger in an airplane deadheading to a location to pick up a plane, which he/she must fly (pilot) to another destination. A photographer, as described in B.’s example above, completes his/her photographic assignment and travels as a passenger back to his/her point of origin.

3. **The travel is carried out under such arduous conditions that the travel is inseparable from work.** Arduous conditions, as used in the governing law (5 U.S.C. 5542 (b)(2)(B)) and as interpreted by case law, are conditions that impose a substantial burden on the traveler beyond that normally associated with travel, such as those imposed by unusually adverse terrain, severe weather conditions or remote sites inaccessible by ordinary means of transportation. Absent some very unusual

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circumstances, travel by motor vehicle over hard surfaced roads or by common carrier, including airlines, is not travel under arduous conditions, even though it may occur at night, continue over an extended period of time, and involve some discomfort or risks.

**Example:** An employee travels to an agency facility by automobile and then is required to travel to a remote location accessible only by all-terrain vehicle over unpaved mountainous terrain to repair or install equipment. The portion of travel by automobile to the agency facility is considered normal travel compensable only if it occurs during the employee’s regularly scheduled hours of duty (including regularly scheduled overtime). The travel by all-terrain vehicle to the remote site to perform work would be creditable as arduous and inseparable from the work time spent repairing and installing equipment.

**4. The travel results from an event that could not be scheduled or controlled administratively by the Executive Branch of the Federal Government.**

a) Time in travel status outside an employee’s duty station is not compensable when it results from an event that was under the control of BPA or any other federal (executive branch) agency (e.g., government-sponsored training or conferences, meetings with other government agencies or meetings arranged by government agencies, scheduled power outages or inspections). When a training course is conducted by an institution (for example, a school or consulting firm under contract to BPA) for the benefit of the federal government, it is assumed the government can control course scheduling, and the event is therefore under the administrative control of the government. Also, training courses put on by a federal government entity (e.g., the Office of Personnel Management, the General Services Administration, the Department of Energy, etc.), are considered to be under the administrative control of the government.

**Example:** An employee from Portland Headquarters is enrolled in an OPM training course held in Washington, D.C. The course begins at 9:00 a.m. on Monday. The employee travels to Washington, D.C. on the preceding Sunday. The travel is not compensable as overtime even though the event was not scheduled to accommodate travel during the employee’s regularly scheduled workweek. The fact that under the government-wide travel regulations the employee could not be paid per diem for Saturday and Sunday to enable him/her to travel during regular duty hours does not create an entitlement to compensation for the Sunday travel under overtime regulations. (Note: the employee may be entitled to compensatory time for time in a travel status).

b) When an event is not under the control of BPA or other federal government executive branch agencies, travel may qualify as compensable time if there is an immediate official necessity in connection with the event that requires travel to

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be performed outside an affected employee’s regular hours. An immediate official necessity means the employee’s presence is absolutely critical to the agency in order to conduct its required mission or respond to events associated with its mission.

**Example:** An electrical engineer whose duty station is in Portland, Oregon, has a regular schedule of Monday through Friday, 7:30 a.m. to 4:15 p.m. A line outage due to severe weather conditions requires an employee to be sent to the Seattle, Washington, area on Tuesday afternoon in order to monitor and report on the effect of repair activities at Puget Sound Power & Light Company. The employee leaves Portland at 3:15 p.m. by car and arrives at the Bellevue, Washington, office of Puget Sound Power & Light at 6:30 p.m. Monitoring and reporting activities are completed at 8:00 p.m. The employee leaves Bellevue at 8:15 p.m., and returns to his/her home in Gresham, Oregon, at 11:30 p.m. The event that caused the employee to be sent to Bellevue was clearly not under BPA’s control. There was also an immediate official necessity for the employee to travel to Bellevue in order to monitor and report on repair activities. Time spent in travel status from 3:15 p.m. through 4:15 p.m. was part of employee’s regularly scheduled workday and he/she is entitled to straight time pay for this period of time. He/she is also entitled to overtime compensation for travel time from 4:15 p.m. through 6:30 p.m. and overtime worked through 8:00 p.m. The engineer’s return travel time, in this case, will also be compensable at the overtime rate.

- Travel outside an employee’s regular work hours to attend training put on by an institution outside the executive branch of the U.S. government, and not for the sole benefit of the executive branch, will be considered hours of employment for which overtime pay may be authorized. Because training is not being conducted solely for the benefit of the executive branch (for example, a university seminar open to any qualified attendee), it is not under the executive branch’s administrative control. Scheduling of the event itself supplies the immediate official necessity, depending on the timing, for travel outside regular hours in order to accommodate the schedule of the training. Depending on timing and duration of training, both travels to training and/or return travel outside employee’s regular hours qualify for overtime pay.

**Example:** An employee from Portland Headquarters is enrolled in a public policy development seminar being conducted by a graduate school of public administration on the east coast. The seminar is open to any registrant. Attendance by the employee is authorized, approved, and paid for by BPA under the employee training regulations in 5 CFR, Part 410. The seminar begins on Monday at 9:00 a.m. The employee travels to the east coast the preceding Sunday. The employee’s travel to the east coast on Sunday would qualify for compensation because it is the result of

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an event not under the control of BPA or an agency in the executive branch and thereby is an official immediate necessity for travel outside regular hours in order to accommodate the schedule of the training.

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