

BUDGET POLICY AND REPORTING MANUAL

<i>date</i> 9/1/71	<i>subject</i> Overtime Compensation	<i>item</i> G-110
<i>supersedes</i>		<i>page</i> 1

1. Purpose, Scope and Regulations

The rules and regulations for Overtime Compensation are promulgated by the Director of the Budget pursuant to section 134 of the Civil Service Law and are published as Part 135 of Title 9 of the "Official Compilation of Codes, Rules and Regulations of the State of New York." The basic rules became effective on February 1, 1967; they have since been amended several times to reflect negotiated and State or Federal legislative changes. Questions regarding their application or interpretation not answered in this manual should be directed to the budget examiner. The full text of the rules follows:

PART 135

OVERTIME COMPENSATION

(Statutory Authority: Civil Service Law, § 134, as amd.)

Sec.

- 135.0 Statement of policy
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Historical Note

Part repealed, new added, filed Dec. 27, 1962; amd., filed Mar. 28, 1963; repealed (except Appendix C-1), new added, filed May 23, 1967 to be eff. Feb. 1, 1967.

Section 135.0 Statement of policy. Consistent with the provisions of chapter 615 of the Laws of 1967 and the applicable provisions of the Federal Fair Labor Standards Act, officers and employees of the State, except those who serve in positions excluded from coverage under section 135.2, shall receive compensation for work performed in excess of 40 hours per week at a rate equal to one and one-half times their hourly rate of pay as provided in section 135.8. It is the policy of the State that overtime work be held to a minimum consistent with the needs and requirements of sound and orderly administration of State government. The State requires supervisors to hold overtime work to such a minimum by the proper scheduling and assignment of activities, simplification of work processes and requiring compliance with realistic standards of performance.

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Historical Note

Sec. added, filed Dec. 27, 1962; amd., filed Mar. 28, 1963; repealed, new added, filed May 23, 1967 to be eff. Feb. 1, 1967.

135.1 Definitions. Wherever used in this Part:

(a) A *workweek* shall mean a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods. A workweek need not coincide with the calendar week—it may begin any day of the week and any hour of the day. Each workweek stands alone. Once fixed, however, it must remain the same unless any change is intended to be permanent.

(b) Except in section 135.11, *overtime* shall mean only hours worked in excess of 40 hours in any workweek by an eligible officer or employee. As used in section 135.11, such term shall also include, in the case of an eligible officer or employee whose basic work schedule is less than 40 hours per week, hours worked in excess of 37 ½ hours but not in excess of 40 hours in a workweek.

(c) An *eligible officer or employee* shall mean any officer or employee who is not deemed ineligible to earn overtime pay, as provided under section 135.2.

(d) *Scheduled overtime* shall mean overtime which is susceptible to scheduling and approval in advance of need.

(e) *Unscheduled overtime* shall mean overtime which is necessitated by emergency conditions which cannot be anticipated in advance.

Historical Note

Sec. repealed, new added, filed Dec. 27, 1962; amd., filed Mar. 28, 1963; repealed, new added, filed May 23, 1967 to be eff. Feb. 1, 1967.

135.2 Exclusions. Officers and employees in positions or types of positions meeting the following criteria shall not be eligible to earn overtime pay:

(a) The head of every department, institution or other State agency and the head and members of boards and commissions.

(b) Deputies of principal executive officers.

(c) Administrative and staff personnel. This group includes those officers and employees in grade 15 and above and officers and employees in unallocated positions paid a salary equal to or in excess of that paid for the minimum of grade 15:

(1) whose primary duty consists of the management of a bureau, division or major subdivision of a department or agency; or

(2) who are in charge of independent offices or physically separated branches; or

(3) whose primary duty consists of administrative or staff work not performed under close and proximate supervision.

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(d) Professional and technical personnel. This group includes those officers and employees in grade 15 and above and officers and employees in unallocated positions paid a salary equal to or in excess of that paid for the minimum of grade 15:

(1) whose positions require, as a minimum qualification, four or more years of study beyond a high school education, or equivalent experience, in a specialized intellectual field, as distinguished from apprenticeship or training in the performance of routine mental, manual or physical processes; and

(2) whose primary duty consists of the performance of work of such a character that the output produced or the results accomplished cannot be standardized in relation to a given period of time; and

(3) whose work is not performed under close and proximate supervision.

(e) Personnel whose duties involve:

(1) a close working relationship with an individual executive; and

(2) work which is exclusively, or almost exclusively, for such executive; and

(3) a work schedule which depends on the personal needs and specific directions of such executive.

(f) All positions for which time records showing actual hours worked each day are not required to be maintained.

(g) All positions, including field positions, in which the incumbents exercise personal discretion in the scheduling of their hours worked, whether or not the number of hours worked exceeds the basic workweek. This group includes any officer and employee:

(1) whose hours of work are controlled by him or the work situation, rather than subject to the direction and control of a supervisor; or

(2) who, subject to appropriate clearance with his supervisor, has substantial freedom in planning his work assignments to make adjustments in the schedule for his basic workweek to meet work requirements efficiently.

(h) All full-time officers and employees whose normal work schedule does not consist of five working days and two days off in a workweek as defined under subdivision (a) of section 135.1.

(i) All part-time personnel. This group includes any officer and employee:

(1) whose normal workweek is less than the basic workweek; or

(2) who is temporarily employed as a special consultant on either a per diem or any other basis.

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Historical Note

Sec. repealed, new added, filed Dec. 27, 1962; amd., filed Mar. 28, 1963; repealed, new added, filed May 23, 1967 to be eff. Feb. 1, 1967.

135.3 Determination of eligibility and ineligibility. Each appointing officer shall submit to the Director of the Budget, for review and approval, a list of all titles in his department or agency, indicating those titles proposed to be ineligible to earn overtime pay. When some, but not all, of the positions in a title are proposed to be ineligible, all the positions in such title shall be enumerated, indicating those proposed for or ineligible. The Director of the Budget shall make the final determination of which titles and positions shall be ineligible to earn overtime pay* and shall file certificates listing such titles and positions with the Department of Audit and Control, the Department of Civil Service, the Senate Finance Committee, the Assembly Ways and Means Committee and the affected department or agency. Such lists may be revised from time to time by the Director of the Budget upon filing of revised certificates. Each appointing officer shall be responsible for keeping officers and employees in his department or agency informed as to their eligibility status to earn overtime pay.

* See Appendix C-1 for lists of titles and positions ineligible to earn overtime credits.

Historical Note

Sec. repealed, new added, filed Dec. 27, 1962; amds. filed: Mar. 28, 1963 and Feb. 2, 1965; repealed, new added, filed May 23, 1967 to be eff. Feb. 1, 1967.

Decision

Filing of overtime compensation rules

Article IV, § 5 of the New York Constitution, directing the filing of rules in order for them to be effective, was enacted for the protection of the public generally and was not intended as a guarantee for public notice to employees of the State. Accordingly, the failure to file the overtime compensation eligibility rules of the Division of Parole with the Department of State did not violate the constitutional provision. *Matter of Wales v. Oswald*, 39 Misc 2d __ 16 (1963).

135.4 Authorization for overtime work. (a) ~~Unauthorized~~ **Unauthorized** overtime work must be authorized in advance by the appointing officer or his designated representative before overtime may be credited. The designated representative must be an officer or supervisor ineligible to earn overtime pay. Each instance of overtime work must be approved individually. "Blanket approvals" are not permitted. When unauthorized overtime is authorized by a designated representative, the appointing officer must be notified within 24 hours. The appointing officer shall provide guidelines for future action by either agreeing with or questioning the authorization.

(b) Notification of unauthorized overtime shall be forwarded to the Division of the Budget at the close of the bi-weekly pay roll period in which the overtime is authorized.

(c) Scheduled overtime work must have the prior approval of the Director of the Budget as provided under section 135.7.

(d) The appointing officer or his designated representative will take all reasonable steps to provide for an equitable distribution of scheduled overtime opportunities among qualified permanent officers and employees of the appropriate work unit.

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(e) In the absence of a sufficient number of volunteers, unscheduled overtime can be required of any officer and employee who, in the judgment of the supervisor, is needed to do the work.

(f) Overtime performed in a higher or lower title can be performed only on a voluntary basis. Extra service work can also be performed only on a voluntary basis.

(g) Eligible officers and employees shall be eligible for overtime for actual travel and/or service performed while in travel status, provided that:

(1) The trip is not between the officer's or employee's residence and his official work station as defined by the appointing officer.

(2) The trip is for the purpose of conducting State business and is authorized in advance.

(3) Authorization is granted only when travel during regular work hours is less economical or unduly delays the officer's or the employee's return to his official work station.

(4) The trip is not taken for the purpose of attending a professional conference or convention.

Historical Note

Sec. repealed, new filed Dec. 27, 1962; amds. filed: Mar. 28, 1963 and Feb. 2, 1965; repealed, new filed May 23, 1967; amds. filed: Oct. 4, 1967; May 2, 1969 eff. immediately. New (a) substituted.

Division of the Budget Interpretation

Attendance at professional conferences and conventions

The following is our interpretation of the rules governing overtime compensation insofar as they apply to persons eligible to earn overtime who are attending professional conferences and conventions, at the full or partial expense of the State. This interpretation is based on the premise that attendance at such sessions is of substantial benefit to the employee and aids in his professional development. It is our opinion that the time spent in attending such conferences and conventions, including travel time to and from them, during evenings, weekends and holidays cannot be considered as overtime. Employees eligible for overtime should be notified in advance that they will not be eligible for overtime while in such attendance. It should be noted, however, that wherever practicable travel incident to such attendance should be so arranged as to occur during normal working hours. We believe this is a reasonable interpretation and is within the intent of the rules.

135.5 Determination of overtime earned. (a) Total hours worked shall include all the time worked by an officer or employee when required to be on duty or at a prescribed workplace and shall exclude all absences from duty and all time allowed for meals. For purposes of computing total hours worked in a week, time during which an officer or employee is excused from work because of holidays, sick leave at full pay, vacation, personal leave, compensatory time off or other leave at full pay shall be considered as time worked by the officer or employee. An eligible member of the security services unit authorized and scheduled to assemble for briefing prior to his tour of duty shall be considered to be on duty during time spent in each such briefing in excess of 10 minutes. Compensatory time off granted in the same workweek in which it is earned, except compensatory time off granted in lieu of a holiday worked in such workweek, does not add to the total hours worked and is not to be construed as time worked by an officer or employee.

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(b) (1) Each time an employee is recalled to work overtime after having completed his scheduled work period and left his scheduled work station, he shall be considered to have worked, for the purpose of computing overtime credits, a minimum of one-half day provided, however, that an employee in the security services unit, as established pursuant to article 14 of the Civil Service Law, so recalled as a result of a riot, prison break, fire or escape and not put to work shall be guaranteed one-quarter day's credit for the purpose of computing overtime compensation. If an employee entitled to a minimum of one-half day of overtime credits works such overtime for more than one-half day, the total time worked shall be used in computing the total hours worked.

(2) Each time an eligible member of the State police is scheduled and authorized to return and returns to duty to work overtime for the purpose of making an appearance in court after completing his regularly scheduled work period and leaving his regularly scheduled work station, he shall be considered to have worked, for the purpose of computing overtime credits, a minimum of two hours. If such employee works such overtime for more than two hours, the total time worked shall be used in computing the total hours worked.

(c) The smallest unit of time to be credited as overtime in any one day shall be one-quarter hour, except that when an eligible member of the security services unit is required to assemble for briefing prior to his tour of duty for a period in excess of 10 minutes, the smallest unit of time to be credited as overtime shall be one minute.

(d) Work performed on a Saturday, Sunday or holiday, as part of an officer's or employee's regular work schedule and not in excess of 40 hours per workweek, is not considered to be overtime under the provisions of section 134 of the Civil Service Law.

(e) Exchanging hours of work may be authorized as indicated in this subdivision.

(1) An appointing authority of any State department or agency, subject to the approval of the Director of the Budget, may permit eligible officers and employees permanently assigned to positions in locations requiring 24-hour a day coverage, to exchange hours of work with other employees in the same title doing the same type of work at the same location.

(2) The provisions of this subdivision shall not apply to those subject to the Federal Fair Labor Standards Act, covering employees of: hospitals and institutions primarily engaged in the care of the aged, the mentally ill or defective who reside on the premises; elementary and secondary schools; schools for mentally gifted or handicapped children; and institutions of higher education.

(3) Requests by eligible employees, pursuant to paragraph (1) of this subdivision, shall be made in writing on a form prescribed by the appointing authority and approved by the Director of the Budget, and submitted for approval to the appointing authority, or his designated representative, for each specific period of duty to be exchanged. In addition to such information as may be required by the appointing authority, such form shall include statements that:

(i) for the purpose of computing overtime, all hours worked pursuant to this subdivision shall be considered as hours worked by the employee originally scheduled to work such hours; and

(ii) the employee actually performing the hours worked in exchange waives any consideration of such hours for overtime compensation; and

(iii) the employees acknowledge that the exchange of hours is voluntary and that no employer obligation is incurred.

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Historical Note

Sec. repealed, new filed Dec. 27, 1962; amd. filed Mar. 28, 1963; repealed, new filed May 23, 1967; amds. filed: July 10, 1967; July 11, 1968; Sept. 12, 1969; Nov. 23, 1970; Nov. 21, 1972. Respectively: relettered (b), (c), and (d) to be (c), (d) and (e) and added new (b) eff. July 1, 1971; amended (a) and (c) eff. Apr. 1, 1972.

135.6 Payment for overtime. (a) Unscheduled overtime shall be compensated in cash without the prior authorization and approval of the Director of the Budget.

(b) Scheduled overtime shall be compensated in cash only after prior authorization and approval by the Director of the Budget of requests for approval of cash payment made pursuant to section 135.7.

Historical Note

Sec. repealed, new added, filed Dec. 27, 1962; amd., filed Mar. 28, 1963; repealed, new added, filed May 23, 1967 to be eff. Feb. 1, 1967.

135.7 Requests for approval of cash payment. (a) Requests for approval of cash payment for scheduled overtime shall be made in writing to the Director of the Budget by the appointing officer of a department or other agency, or his duly authorized representative, not less than five workdays prior to the date such overtime is to start.

(b) All such requests shall furnish the following information:

(1) the titles of the positions for which payment of overtime compensation is requested and the number of hours of overtime per week requested for each title;

(2) the number of vacant positions with the same titles as those for which payment of overtime compensation is requested, excluding positions filled on a temporary basis;

(3) the reasons for requiring overtime and the period to be covered.

Historical Note

Sec. repealed, new added, Dec. 27, 1962; amd., filed Mar. 28, 1963; repealed, new added, filed May 23, 1967; to be eff. Feb. 1, 1967.

135.8 Computation of cash compensation. Payment for overtime shall be computed in the following manner:

(a) If an officer or employee works overtime in his regular position or title or in a position the title of which is allocated to the same salary grade as his regular position, he shall be compensated for work in excess of 40 hours at one and one-half times the regular hourly rate of pay.

(b) When the overtime is worked in a position allocated to a salary grade lower than the officer's or employee's regular position, he shall be compensated for work in excess of 40 hours at one and one-half times the hourly rate of pay of the maximum salary of the lower position plus longevity increments to which he would otherwise be entitled were he in such lower grade position, but in no event in excess of one and one-half times the hourly rate of pay of his regular position.

(c) When the overtime is worked in a position which is allocated to a higher salary grade than the grade of the officer's or employee's regular position, he shall be compensated for work in excess of 40 hours at one and one-half times the hourly rate of compensation he would be entitled to if he were permanently promoted to the higher position.

(d) The hourly rate of compensation shall be determined by dividing the basic annual rate of compensation plus any additional compensation payable because of the location of employment or because work is performed between 6 p.m. and 6 a.m. by 2,000. The hourly rate of compensation for per diem employees shall be determined by dividing the per diem rate by eight.

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Historical Note

Sec. added, filed Dec. 27, 1962; amd. filed Mar. 28, 1963; repealed, new added, filed May 23, 1967; amd. filed Aug. 21, 1969 eff. Apr. 1, 1969. New (d) substituted.

135.9 Time of payment of cash compensation. When cash payment for scheduled overtime has been approved by the Director of the Budget, officers and employees shall be paid for such overtime compensation in excess of 40 hours per week by the close of the second bi-weekly payroll following the period during which the overtime is earned.

Historical Note

Sec. repealed, new filed Dec. 27, 1962; amd. filed Mar. 28, 1963; repealed, new filed May 23, 1967; amds. filed: July 10, 1967; July 11, 1968; Sept. 12, 1969; Nov. 23, 1970 eff. July 17, 1970.

135.10 Certificates of approval for cash compensation. The Director of the Budget shall file certificates of approval for cash compensation for scheduled overtime with the Department of Audit and Control, the Department of Civil Service, the Senate Finance Committee and the Assembly Ways and Means Committee.

Historical Note

Sec. ed, new filed Dec. 27, 1962; amd. Filed Mar. 28, 1963; repealed, new filed May 23, 1967; amds. Filed: July 10, 1967; July 11, 1968; Sept. 12, 1969; Nov. 23, 1970 eff. July 17, 1970.

135.11 Compensatory time off. (a) Eligible officers and employees whose basic work schedule is less than 40 hours per workweek shall be entitled to compensatory time off on a straight-time basis for overtime worked in excess of 37-1/2 hours but not in excess of 40 hours per workweek.

(b) Overtime credits earned prior to February 1, 1967, shall be compensated by the granting of compensatory time off on a straight-time basis.

(c) Overtime credits earned on or after May 1, 1963, and for which compensatory time off is provided shall be liquidated not later than the close of the fiscal year following the one in which they were earned.

(d) Overtime credits earned prior to May 1, 1963, including credits owing to those officers and employees who are ineligible to earn such credits following adoption of this Part, shall be liquidated at a minimum rate of 10 workdays per fiscal year. However, overtime credits owing to parole officers and warrant and transfer officers will be liquidated pursuant to the agreement entered into as a result of court action and are accordingly exempt from the liquidation requirements of this section.

(e) Compensation upon transfer, separation, retirement or death. Notwithstanding the foregoing provisions of this section:

(1) An officer or employee who transfers from one department or agency to another, or who separates or retires from State service, shall be compensated in cash by the department or agency from which he is so transferred, separated or retired, for such of his compensatory time credits, up to 30 workdays, as cannot be liquidated by compensatory time off prior to such transfer, separation or retirement. An officer or employee who transfers within a department or agency shall not be compensated in cash for accrued time credits, but such credits shall be transferred with the officer or employee.

(2) In the event of death of an officer or employee, his estate or beneficiary shall be paid the monetary value of his accumulated overtime credits, up to the equivalent of 30 workdays, by the department or agency by which he had been last employed.

(3) Payment for compensatory time off credits hereunder shall be made at the current regular rate of pay of the officer and employee.

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Historical Note

Sec. added, filed May 23, 1967 to be eff. Feb. 1, 1967.

135.12 Exceptions. The restrictions and limitations contained in this Part may be waived pursuant to provisions of law by the Director of the Budget whenever he determines that strict adherence to the rules would be detrimental to the sound and orderly administration of State government.

Historical Note

Sec. added, filed May 23, 1967 to be eff. Feb. 1, 1967.

2. List of Positions Ineligible

Appendix C-1 of Title 9 of the "Official Compilation of Codes, Rules and Regulations of the State of New York" lists the titles and positions designated as ineligible to accrue overtime credits. As positions are created, modified or terminated, appropriate changes to the ineligibility list may be required. Recommendations for revisions should be sent to the budget examiner, and should contain information regarding reasons for such revisions, including the applicable criteria for ineligibility as indicated in the rules. Appendix B-1 may be found in Volume A of the "Official Compilation of Codes, Rules and Regulations of the State of New York."