



United States Department of the Interior

BUREAU OF INDIAN EDUCATION


Washington, D.C. 20240

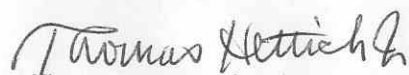
IN REPLY REFER TO:

JAN 29 2015

Memorandum

To: Deputy Directors
Associate Deputy Directors
Division Chiefs
Education Line Officers
School Principals
School Administrators
College Presidents

Through: Dr. Charles M. Roessel 
Director, Bureau of Indian Education

From: Thomas Hettich 
Human Resources Officer, Bureau of Indian Education

Subject: Overtime and Compensatory Time Policies and Procedures for the Bureau of Indian Education

Effective immediately, the attached Bureau of Indian Education (BIE) Policy Memorandum will serve as guidance for requesting, approving, accruing and recording overtime and compensatory time worked by BIE employees. This Policy Memorandum replaces the prior policies and procedures memorandum dated October 1, 2009.

If you have specific questions regarding overtime and compensatory time, please contact your servicing Employee and Labor Relations Specialist in the Human Resources Office. A list of current contacts is attached.

Thank you for your attention to this matter.

Attachments

BUREAU OF INDIAN EDUCATION POLICY MEMORANDUM

Overtime and Compensatory Time Policies and Procedures for the Bureau of Indian Education

Effective date: February 1, 2015

Expiration date: When superseded or rescinded in writing

REFERENCES: 5 USC 5541 ET SEQ, 5 CFR PART 550, 5 CFR PART 551, 5 CFR PART 610, 29 USC 203(E)(2), DEPARTMENT OF THE INTERIOR HOURS OF WORK HANDBOOK, DEPARTMENT OF THE INTERIOR PERSONNEL MANAGEMENT LETTER NO. 88-5 (550), 28 IAM – H, COLLECTIVE BARGAINING AGREEMENT, & 62 BIAM 11

Background: Overtime and compensatory time use and accrual policies and procedures for Bureau of Indian Education employees.

This document provides guidance on Federal and Department of the Interior (DOI) regulations for the reporting, use, approval and compensation of overtime and/or compensatory time worked by employees within the Bureau of Indian Education (BIE) and supersedes the policy memorandum dated August 27, 2009. Compensation will be made either by monetary payment or equivalent time off (compensatory time), depending on the employee's classification as exempt or non-exempt under the Fair Labor Standards Act (FLSA or the Act).

SUMMARY OF OVERTIME PAY PROVISIONS

Overtime compensation is authorized and paid under 5 U.S.C. § 5542 for an exempt employee and under the FLSA for a non-exempt employee. Under either authority, payment may be made to any full-time or part-time employee for the performance of overtime work. Overtime hours are all hours in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek

during which work is performed by an employee unless such employee is working an approved alternate work schedule which permits more than 8 hours work during a workday. For employees on an approved alternate work schedule, overtime pay is paid for hours worked which exceed those specified by the alternate work schedule. The administrative workweek begins on Sunday and ends the following Saturday.

An employee who is non-exempt is covered by the FLSA in accordance with 5 CFR § 551. A non-exempt employee is entitled to overtime pay for hours worked in excess of 8 hours in a day or 40 hours in a week which management approves OR suffers or permits work to be performed.¹

An employee who is exempt is not covered by the FLSA in accordance with 5 CFR § 551.

The FLSA designation is found in block 35 “FLSA Category” of the official SF-50 Notification of Personnel Action. If the letter is “N” (non-exempt), the employee is covered by the Act if the letter is “E” the employee is exempt from the provisions of the FLSA.

OVERTIME PAY/COMPENSATORY TIME

Prior to working overtime, an employee must:

1. Request in writing to work overtime; and
2. Have the request approved in writing by his/her supervisor

Or the supervisor may *assign* work to an employee to be performed in excess of 8 hours in a day or 40 hours in a week. The supervisor shall authorize the performance of overtime work in writing using the form contained in Appendix A. This is true whether or not an employee has requested overtime pay or compensatory time for the work performed.

All such work shall be recorded on time and attendance reports using Quick time instructions and procedures.

¹ “Suffered or Permitted Work” means any work performed by a non-exempt employee for the benefit of an agency outside of his/her tour of duty, *whether requested or not*, when the employee’s supervisor knows, or has reason to believe that the work is being performed *and* has an opportunity to prevent the work from being performed. When the supervisor is aware that an employee is performing work outside of his/her scheduled tour of duty and does nothing to prevent it from occurring, he/she has suffered or permitted the employee to work. As a result, the employee is entitled to overtime compensation since suffered or permitted work constitutes hours of work under the FLSA.

COMPENSATION OF OVERTIME PAY

RATE OF PAY

EXEMPT EMPLOYEES

Basic pay rate does not exceed GS-10, Step 1

Overtime rate is 1½ times the basic pay rate

Basic pay rate exceeds GS-10, Step 1

Overtime rate is equal to the greater of:

1½ times the applicable minimum hourly rate of basic pay for GS-10, Step 1

OR

the employee's hourly rate of basic pay.

NON-EXEMPT EMPLOYEES

1½ times the employee's hourly rate of basic pay.

COMPENSATORY TIME

Must be requested in writing by the employee.

Must be approved by supervisor in writing.

Compensatory time off earned must be used within twenty-six pay periods from the date the overtime work is performed.

Compensatory time is earned in an amount equivalent to the hours worked.

NONEXEMPT EMPLOYEES:

If overtime pay is based on FLSA provisions, overtime must be paid unless the employee requests compensatory time off in lieu of overtime pay.

If compensatory time is not taken within twenty-six pay periods, employee will be paid at the overtime rate in effect at the time the work was performed.

EXEMPT EMPLOYEES

Employee may request compensatory time off in lieu of overtime pay.

Compensatory time must be used within twenty-six pay periods by the employee or the compensatory time will be lost and overtime will not be paid. (Unless failure to use the compensatory time is due to a work-related exigency beyond the employee's control.) If an exigency of the service prevents the usage of the compensatory time, overtime may be paid.

If basic pay exceeds the maximum rate of pay for GS-10, management may require an exempt employee to be compensated with compensatory time.

SUPERVISORS ARE RESPONSIBLE FOR:

1. Ensuring that effective and efficient planning has been performed so that required overtime is minimal.
2. Approving overtime and compensatory time within their level of authority and recommending higher level approval when warranted.
3. Ensuring that special care is taken to see that employees approved for overtime work make their maximum contribution during regular working hours.
4. Ensuring that overtime work is for completion of a specific project or task and not an extension of daily work.
5. Monitoring employee compensatory time balances to ensure employees schedule the time as soon as possible after the time is earned.
6. Submit monthly reports of overtime costs to the Education Program Administrator.
7. Obtaining approval from the BIE Director or his/her designee prior to approving overtime pay in excess of 600 hours in a calendar year.

Overtime questions concerning specific situations should be directed to the Employee & Labor Relations Section of the Human Resources office.

FREQUENTLY ASKED QUESTIONS:

Question 1:

May a non-exempt employee be required to request compensatory time for overtime hours worked?

Answer:

No. Both the regulations and the collective bargaining agreement allow overtime work to be compensated as compensatory time *only at the election of the employee*. Unless such employee specifically requests compensatory time, s/he is entitled to payment at the appropriate overtime rate.

Question 2:

If I find out that a subordinate non-exempt employee worked overtime during the last weekend for 8 hours on Sunday without my knowledge, am I obligated to pay him overtime for that work since I did not approve him working those hours? If so, is he entitled to be paid both overtime and Sunday premium for the hours worked? May I discipline him for not obtaining approval to work overtime?

Answer:

Yes, you are obligated to pay him for the hours worked. While the overtime work should have been requested and approved by you using the overtime/comp time request and approval form in Appendix A, you are obligated to pay overtime for the hours worked. For work involving night time or Sunday premium pay, the employee is entitled to be paid whichever is greater, either the Sunday premium or overtime.

If the employee has been advised of the proper procedure for requesting to work overtime and has not followed those procedures, he may be subject to disciplinary action, if warranted.

Question 3:

What if the facts are the same as in question # 2 above except the employee is exempt?

Answer:

5 CFR 550.111(a)(1) requires that for overtime to be paid, the hours of work must be officially ordered and approved. Since the work was performed without appropriate approval, payment is not required.

Question 4:

The school's budget will not support the payment of overtime at this time but I need two non-exempt employees to work 16 hours of additional time this week to complete a report, may I require them to work the hours and compensate them with compensatory time?

Answer:

No. Despite the budgetary constraints, non-exempt employees are entitled to overtime pay unless they request compensatory time.

Question 5:

If we negotiate a new collective bargaining agreement with the Union will I be permitted to require non-exempt employees in the bargaining unit to take compensatory time instead of overtime?

Answer:

No. A collective bargaining agreement cannot waive rights employees have pursuant to the FLSA.

Question 6:

May an individual who is a full-time non-exempt bus driver volunteer to drive the basketball team to away games on the school bus outside his scheduled work hours? If so, may he be compensated with a stipend?

Answer:

An individual who is a full-time bus driver provides the service of transporting students. Driving a school bus constitutes the same, identical or similar service within the meaning of 29 CFR § 553.103, regardless of the characterization of the passengers as students or student athletes and of whether the transportation is to and from school or school authorized activities. Thus, this individual driver would not qualify as a *volunteer* under the FLSA and payment by a stipend would not be appropriate. Overtime or compensatory time would be the appropriate method of payment to this employee for any hours worked in excess of 8 hours per day or 40 hours per week.

The FLSA indicates that individuals are volunteers, not employees of a public agency, when they meet the following criteria:

- A. Perform hours of service for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered. The statute clarifies that a volunteer performing such service can either receive no compensation or be paid expenses, reasonable benefits or a nominal fee to perform such services;

- B. Offer their services freely and without coercion, direct or implied, from the employer;
- C. Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer. In other words, individuals can qualify as volunteers if they either volunteer for different agencies **or** perform different services than they are employed to perform.

Question 7:

May the hypothetical school bus driver described in question number 6 above volunteer to coach the basketball team? If so, is it permissible for him to be paid by a stipend or must he be paid overtime?

Answer:

Yes, the bus driver is entitled to overtime pay for part of that time. The duties of a school bus driver are different than those performed by the basketball coach. The bus driver may be paid in the form of a stipend as a coach, provided that the stipend is a nominal fee, is not a substitute for compensation and must not be tied to productivity. In determining whether a fee constitutes “a substitute for compensation” or whether it is “tied to productivity,” one must examine the economic realities of the particular situation. A key factor in the context of school coaching or advising a club is whether the amount of the fee *varies* as the particular individual spends more or less time engaged in the volunteer activities, or *varies* depending upon the success or failure of a particular team or school activity. For example, if the fee does not vary based upon the win-loss record of a team, or the degree of student involvement in a particular club, or other similar factors relevant to the quality or quantity of the team, club, or activity, the fee would not generally be considered a “substitute for compensation” or “tied to productivity.”

If the stipend is no more than 20 percent of what the school would otherwise pay to hire a coach or advisor for the same services, it would appear to be a permissible “nominal fee.” Such a threshold assumes that the coach is freely volunteering his services and the school simply provides a lump-sum payment or series of payments without regard to wins or losses or hours worked as discussed above.

Question 8:

A bus driver normally works from 5:30 am until 8:30 am then returns to work from 1:30 pm to 4:30 pm. Yesterday, he worked from 5:30 am until 8:30 am, returned to the school at 1:30 pm and then took the basketball team to another school; about two hours driving time from his duty station. He returned to the school at 8:00 pm. The last student was picked up by his parent at 8:15 pm. Is the driver entitled to be paid overtime for the time between 4:30 pm and 8:30 pm?

Answer:

Yes, for part of that time. He can receive overtime for hours exceeding eight hours in a work day or forty hours during a work week. The time between 1:30 pm and 6:30 pm would equal eight hours when combined with the time worked earlier in the day. He would be entitled to be paid overtime for those hours between 6:30 pm and 8:15 pm. If a meal break was taken with the team after they had played the game and he was given that same break, it could be subtracted from those hours. For the time spent between 8:15 pm and 8:30 pm, the driver would be entitled to be paid overtime for that time if it was spent in required postliminary activities, such as fueling the school bus, performing a safety inspection, or other activities required by the employer and associated with the principal duties of operating a school bus. If the driver was not engaged in postliminary activities required by the employer, that time would not be compensable.

Question 9:

Given that same scenario noted in question 8 above, can I place the driver off duty while he is waiting for the students to finish their game and avoid the overtime liability?

Answer:

It depends upon the totality of the circumstances. If for work related reasons, the employee is restricted by official order to a specific location for the benefit of the employer and is required to remain in a state of readiness; such time is generally considered hours of work. The Supreme Court dealt with this type of fact pattern seventy years ago and attempted to distinguish between employees who are waiting to be engaged from those who are engaged to be waiting. In other words, an employee can be hired and have no work assigned to him. The fact that the employer has not assigned work to that employee but has required him to remain at a specific location does not change his entitlement to be paid for those hours at the appropriate rate of pay.

Question 10:

A non-exempt custodian has a schedule of 6:00 am – 2:30 pm, Monday through Friday. He is required to work eight hours on a Saturday in a week during which a holiday also occurs. The custodian is not scheduled to work on the holiday. Are the hours worked on the Saturday considered overtime hours?

Answer:

Yes. Hours in a non-work paid status such as paid leave and holidays are considered hours of work.

AUTHORIZATION TO WORK OVERTIME OR COMPENSATORY TIME

Overtime

Pay Period

Compensatory time

Requesting
Office

Travel Comp time

Religious Comp time

Employee name

Day & Date Work Performed	Total hours requested or authorized	Overtime start time	Overtime end time	Employee signature Certifies hours worked
Sunday Date:				
Monday Date:				
Tuesday Date:				
Wednesday Date:				
Thursday Date:				
Friday Date:				
Saturday Date:				

Justification

Accomplishments

Accounting code

Work Requested by

Approved by

Date

Date

Warning: The furnishing of false information on this form may result in discipline, including discharge and/ or a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both. (18 USC §1001)

Privacy Act Statement: The information collected on this form will be used to administer pay and leave provisions pursuant to 5 USC §§5541, 5542, 5543, 5550a, 29 USC§ 201, et.seq, the 62 BIAM 11 and collective bargaining agreements, as applicable. Your information may be disclosed as follows: in relevant legal proceedings, to law enforcement, if requested; to entities under contract with the Department or Bureau to perform audits; to labor organizations as required by law; and to the EEOC, MSPB, Office of Special Counsel or Government Accounting Office.