



The Transportation Security Administration shall adhere to Title 5 pay rules except to the extent that the Federal Aviation Administration or TSA has issued a policy that varies from a Title 5 pay rule.

REVISION: This directive supersedes TSA MD 1100.55-3 and rescinds any related Orders, policies, and guidance related to non-exempt premium pay issued by the Transportation Security Administration (TSA) or under the Federal Aviation Administration personnel management system. (49 U.S.C. § 40122)

SUMMARY OF CHANGES: This directive clarifies that all overtime must be ordered and approved in writing and in advance of the work to be performed, or that suffered or permitted overtime must be documented as soon as possible after it is worked. It also clarifies that compensatory time must be used before annual leave.

1. **PURPOSE:** This directive provides TSA's policy on the payment of premium pay to Fair Labor Standards Act (FLSA) non-exempt employees.
2. **SCOPE:** This directive applies to all TSA FLSA non-exempt employees.
3. **AUTHORITIES:** The Aviation and Transportation Security Act. TSA is not legally required to follow FLSA provisions. However, TSA will apply the provisions of the act, with minor modifications.
4. **DEFINITIONS:**
 - A. Act or FLSA: The Fair Labor Standards Act of 1938, as amended.
 - B. Administrative Workweek: Any period of seven (7) consecutive days designated in advance by the Under Secretary, or an appropriate designee.
 - C. Basic Workweek: For full-time employees, means the established 40-hour workweek. For part-time employees, it is the pre-established number of hours scheduled to work during the workweek.
 - D. Employ: To engage a person in an activity that is for the benefit of TSA, and includes any hours of work that are suffered and permitted.
 - E. Employee: A person in a non-exempt position.
 - F. FLSA Non-Exempt: Employees in identified positions are covered by the minimum wage and overtime FLSA provisions, as amended by this management directive.

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- G. Hours of work: All time spent by an employee performing an activity for the benefit of TSA and under the control or direction of TSA. Hours of work are creditable for determining overtime pay.
- H. Irregular or occasional overtime work: Overtime work that is not scheduled in advance of the employee's workweek.
- I. Overtime: Officially ordered and approved in writing, or suffered or permitted, hours worked in excess of eight (8) hours in a day or 40 hours in a week for a full-time employee unless the employee is on a compressed work schedule.
- J. Suffered or permitted work: Any work performed by an employee for the benefit of TSA, whether requested or not, provided 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.
- K. Workday: The period between the beginning of the principal activities that an employee is engaged to perform on a given day and the end of the principal activities for that day. All time spent by an employee in the performance of such activities is hours of work. The workday is not limited to a calendar day or any other 24-hour period. Any rest period authorized by TSA that does not exceed 15 minutes and that is within the workday shall be considered hours of work. Bona fide meal periods shall not be considered hours of work.
- L. Work time: For the purpose of determining FLSA exemption status means time spent actually performing work. This excludes periods of time during which an employee performs no work, such as standby time, sleep time, meal periods, and paid leave.
- M. Work time in a representative workweek: The average percentages of work time over a period long enough to even out normal fluctuations in workloads and be representative of the job as a whole.
- N. Workweek: A fixed and recurring period of 168 hours--seven (7) consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day.
- O. Workweek basis: The unit of time used as the basis for applying overtime standards under the Act and, for employees under flexible or compressed work schedules. The FLSA takes a single workweek as its standard and does not permit averaging of hours over two or more weeks, except for employees engaged in fire protection or law enforcement activities under section 7(k) of the Act.

5. RESPONSIBILITIES:

Managers are responsible for applying the provisions of this directive consistently for non-exempt employees.

6. POLICIES & PROCEDURES:

A. Travel and Training

(1) Travel

(a) Time spent traveling shall be considered hours of work if:

(i) An employee is required to travel during regular working hours;

(ii) During non-work hours, an employee is required to drive a vehicle or perform other work while traveling;

(iii) During non-work hours, an employee is required to travel as a passenger on a one-day assignment away from the official duty station; or

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

(b) 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; such travel is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work.

(c) An employee who is offered one mode of transportation, and who is permitted to use an alternative mode of transportation or an employee who travels at a time other than that selected by TSA shall be credited with the lesser of:

(i) The actual travel time which is hours of work under this section; or

(ii) The estimated travel time, which would have been considered hours of work had the employee, used the mode of transportation offered by TSA, or traveled at the time selected by TSA.

(d) An employee must travel more than 50 miles from his or her official duty station to be outside the limits of his or her official duty station for determining overtime pay for travel.

(2) Time Spent in Training or Attending a Lecture, Meeting, or Conference

(a) Time spent in training, shall be administered as follows:

(i) Time spent in training during regular working hours shall be considered hours of work.

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- (ii) Time spent in training outside regular working hours shall be considered hours of work if:
- The employee is directed to participate in the training by his or her organization (An employee is “directed to participate” when the training is required by TSA and the employee’s performance or continued retention in his or her current position will be adversely affected by non-enrollment in the training. Unless the employee is directed to participate, payment by TSA of all or part of the training expenses creates no entitlement to overtime hours.); and
 - The purpose of the training is to improve the employee’s performance of the duties and responsibilities of his or her current position. (It does not include upward mobility training or developmental training to provide an employee the knowledge or skills needed for a subsequent position in the same field.)
- (iii) Time spent in apprenticeship or other entry level training, or internship or other career related work study training, or training under the Veterans Readjustment Act outside regular working hours shall not be considered hours of work, provided no productive work is performed during such periods, except when:
- An employee is given training during a period of duty for which he or she is already receiving premium pay for night, holiday, or Sunday work. The employee shall continue to receive that premium pay, but shall not receive monetary compensation for hours in excess of eight (8) in a day or 40 in a week. All hours in excess of eight (8) in a day or 40 in a week will be compensated in compensatory time. This exception does not apply to an employee assigned to full-time training at institutions of higher learning.
 - An employee is given training at night because situations that he or she must learn to handle occur only at night. The employee shall be paid applicable premium pay except for hours worked in excess of eight (8) in a day or 40 in a week. Those hours will be compensated for with compensatory time.
 - An employee is given training on a holiday, or on a Sunday because the costs of the training, premium pay included, are less than the costs of the same training confined to regular work hours. The employee shall be paid the applicable premium pay except for hours worked in excess of eight (8) in a day or 40 in a week. Those hours will be compensated for with compensatory time.
- (iv) TSA shall continue to pay availability pay during agency-sanctioned training to a criminal investigator who is otherwise eligible for it.
- (v) Time spent by an employee performing work for TSA during a period of training shall be considered hours of work.

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NOTE: Hours beyond the normal tour, or on a regular-day-off, spent in training by screeners may only be compensated as compensatory time. This is an exception to the general rule that provides management may not direct a non-exempt employee to take compensatory time rather than receive overtime pay.

- (b) Time spent attending a lecture, meeting, or conference shall be considered hours of work if attendance is:
 - (i) During an employee's regular working hours; or
 - (ii) Outside an employee's regular working hours, and
 - The employee is directed by TSA to attend such an event; or
 - The employee performs work for the benefit of TSA while attending.

B. Hourly Regular Rate of Pay

- (1) An employee's hourly regular rate is computed by dividing the total remuneration paid to an employee in the workweek by the total number of hours of work in the workweek for which such compensation was paid.
- (2) Total remuneration includes all remuneration for employment paid to, or on behalf of, an employee except:
 - (a) Payments as rewards for service, the amount of which are not measured by or dependent on hours of work, production, or efficiency (e.g., a cash award for a suggestion made by an employee and adopted by TSA);
 - (b) Reimbursements for travel expenses, or other similar expenses, incurred by an employee in furtherance of TSA's interest, which are not related to hours of work;
 - (c) Payments made in recognition of services performed during a given period, if both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employing organization (i.e., discretionary cash awards or bonuses);
 - (d) Contributions by TSA to a fund for retirement, insurance, or similar benefits;
 - (e) Extra compensation provided by a premium rate paid for hours of work performed by an employee in excess of eight (8) in a day, 40 in a week, or in excess of 80 in a pay period for employees under an alternate work schedule.
 - (f) Extra compensation provided by a premium rate paid for hours of work performed by an employee on a Sunday or a holiday where such premium rate is at least one and one-half times the employee's rate of pay for work performed in nonovertime hours on other days; or

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- (g) Extra compensation provided by a premium rate paid for hours of work performed by an employee outside his or her regular working hours, where such premium rate is at least one and one-half times the employee's rate of pay for work performed in nonovertime hours.

C. Overtime Pay

(1) General

- (a) TSA shall compensate a non-exempt employee on a standard schedule for all officially ordered and approved, in writing, hours of work in excess of eight (8) in a day or 40 in a workweek, and any "suffered or permitted" hours, at a rate equal to one and one-half times the employee's hourly regular rate of pay, except that an employee shall not receive overtime compensation under this part—
 - (i) For hours of work that are not overtime hours -- any hours in excess of those specified hours which constitute the compressed schedule -- for employees under a compressed work schedules;
 - (ii) For hours of work compensated by compensatory time off, either as the result of training or an employee's request to substitute compensatory time off for overtime pay;
 - (iii) For fractional hours of work of seven (7) minutes or less. (When irregular or occasional overtime work is performed in other than the full fraction, odd minutes shall be rounded up or rounded down to the nearest full fraction of an hour used to credit overtime work.)
- (b) Employees working alternative work schedules will not receive overtime pay until working more than 80 hours during a pay period. The excess hours must have been ordered and approved in writing, or be considered "suffered or permitted."
- (c) Hours worked in excess of eight (8) in a day, 40 in a week, or 80 in a pay period must be documented on the attached form before worked if ordered and approved, or as soon as possible after performed if "suffered or permitted."

(2) Biweekly earnings limitation

The maximum biweekly earnings limitations described HRM Bulletin 531-2, January 2004 Pay Limitations for TSA Employees Under the Core Compensation System (Non-Executives), March 16, 2004, do not apply to non-exempt employees.

(3) Overtime pay entitlement

- (a) An employee's overtime entitlement under this subpart includes:

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- (i) The straight time rate of pay times all overtime hours worked; plus
 - (ii) One-half times the employee's hourly regular rate of pay times all overtime hours worked.
- (b) An employee's straight time rate of pay is equal to the employee's rate of pay for his or her position (exclusive of any premiums, differentials, or cash awards or bonuses). For an employee who is authorized Law Enforcement Availability Pay (LEAP), straight time rate of pay is equal to basic pay plus LEAP pay divided by the hours for which the basic pay LEAP are intended.
- (4) Call Back Overtime Pay
- If an employee is called away from his home of residence during "non-work" hours, the employee is entitled to receive a minimum of two hours overtime pay. For example, if an employee with a regular shift of 8:00 a.m. to 4:30 p.m., Monday through Friday, is called into the office at 10:00 p.m. on a Monday night and completes his or her assignment by 10:30 p.m., the employee will receive two (2) hours of overtime pay even though it took only 30 minutes to complete the assignment. Call back hours must be documented on the attached form as soon as possible after work is performed.
- (5) Annual Premium Pay for Administratively Uncontrollable Overtime (AUO)
- The payment of AUO *is not* authorized within the TSA.
- (6) Compensatory Time Off in Lieu of Overtime Pay
- (a) At the request of a non-exempt employee, management may grant compensatory time off from an employee's tour of duty instead of payment under overtime pay for an equal amount of irregular or occasional overtime work.
 - (b) At the request of an employee, management may grant compensatory time off from an employee's basic work requirement under a compressed work schedule, instead of overtime pay for an equal amount of overtime work, whether or not irregular or occasional in nature.
- (7) Administration of Compensatory Time
- (a) When an employee receives compensatory time, the amount of compensatory time authorized is the same as the hours of overtime worked, e.g., one hour for one hour of overtime work. The maximum amount of compensatory time an employee may have to his or her credit is 160 hours.
 - (b) Employees and supervisors have a shared responsibility for requesting and scheduling compensatory time off as soon as practicable after it is earned. ***It should usually be worked off within six (6) months***, although this may vary with local circumstances and workload cycles. ***Supervisors are held accountable for scheduling time off.***

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Employees are responsible for requesting the use of compensatory time as soon as possible after it is earned.

- (c) ***Compensatory time off shall be scheduled and taken before granting annual leave, except:***
- (i) In instances such as toward the end of the leave year when the use of compensatory time may result in an employee's losing accrued annual leave or leave restored from a prior year; or
 - (ii) When it is necessary to retain a small amount of compensatory time for employees whose work schedules (regularly scheduled tour of duty) are occasionally disrupted by conditions, which are outside the control of agency officials and which prevent the performance of work for short periods of time.
- (d) When use of compensatory time is granted, employees will receive pay at their regular rate of pay.

(8) Payment for Compensatory Time

- (a) Employees who transfer or separate from TSA will be paid for unused compensatory time to their credit. Such overtime pay is based on the employee's basic hourly rate applicable at the time the overtime work was performed.
- (b) Employees shall be paid for compensatory time exceeding 160 hours in a personal balance. Pay for compensatory time is based on the employee's basic hourly rate applicable at the time the overtime work was performed. For example, if over a 3-year period, an employee accumulates 162 hours of compensatory time, the employee will be paid two (2) hours of overtime pay at the overtime rate in effect -- when the earliest compensatory hours were earned.

D. Night Pay Differential

(1) General

- (a) Night work is regularly scheduled work performed by an employee between the hours of 6:00 p.m. and 6:00 a.m. An employee who performs night work is entitled to pay for that work at his or her rate of basic pay plus a night pay differential amounting to 10 percent of the rate of basic pay. Night pay differential may only be paid for the hours of work occurring between 6:00 p.m. and 6:00 a.m. Therefore, if an employee has a normal tour that encompasses both daytime and nighttime hours, only those occurring between 6:00 p.m. and 6:00 a.m. will be computed with the differential. If an employee is on leave during a night tour, the employee will not receive night pay differential for the pay period.
- (b) Employees working a compressed schedule that includes time either before 6:00 a.m. or after 6:00 p.m. will not receive night pay differential. However, an employee working a

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compressed schedule, all the hours of which fall between 6:00 p.m. and 6:00 a.m., is entitled to night shift differential.

(2) Computation of Night Pay Differential

- (a) Night pay differential is in addition to overtime, Sunday, or holiday pay, and is not included in the rate of basic pay used to compute overtime, Sunday, or holiday pay.
- (b) An employee who normally works all daytime hours is entitled to a night pay differential when the employee is temporarily assigned during the administrative workweek to a daily tour of duty that includes night work. This temporary change in a daily tour of duty within the employee's regularly scheduled administrative workweek is distinguished from a period of irregular or occasional overtime work. For example, if an employee is told that his/her official hours are being temporarily changed from 8:00 a.m. to 4:30 p.m. to 11:00 a.m. to 7:30 p.m., the employee is entitled to night pay differential from 6:00 p.m. to 7:30 p.m. However, if the employee is told that he/she must work 3 hours of overtime, until 7:30 p.m., the employee is not entitled to night pay differential.

E. Pay for Holiday Work

(1) General

- (a) An employee who performs work on a holiday will receive pay at his or her rate of basic pay, plus premium pay equal to his or her rate of basic pay. Therefore, an employee working a normal tour on a holiday will receive "double time" – eight (8) hours of basic pay that all employees receive on the holiday, and another eight (8) hours of pay for working.
- (b) An employee does not have to work a full tour of duty on a holiday to receive pay for holiday work. If any portion of the employee's normal tour falls on the holiday, the employee is entitled to receive double time for all regularly scheduled hours. For example, if an employee's tour of duty includes a shift from 6:00 p.m. on a Thursday to 2:30 a.m. on Friday, and Friday is a holiday, the employee will receive holiday pay for the entire shift.
- (c) When two basic (non-overtime) tours of duty include hours on a holiday, the holiday tour is the tour of duty that begins on the holiday. For example, if the employee in the previous example also has a shift starting Friday at 6:00 p.m., ending Saturday at 2:30 a.m. and Friday is a holiday, the employee will receive holiday pay for the shift starting Thursday at 6:00 p.m., but not for the shift beginning Friday at 6:00 p.m. and ending Saturday at 2:30 a.m.
- (d) Holiday pay is in addition to overtime, Sunday, or night pay differential, and is not included in the rate of basic pay used to compute overtime, Sunday, or night shift differential. However, the hours worked on the holiday are used in computing the

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number of hours worked in the administrative workweek in determining whether an employee is entitled to receive overtime pay.

(2) **Minimum Payment**

An employee assigned to work on a holiday is entitled to receive a minimum of two (2) hours holiday premium pay.

(3) **Overtime on a Holiday**

If an employee works officially ordered and approved overtime on a holiday -- work in excess of eight (8) hours -- the employee will receive overtime computed as described under the provisions on the computation of overtime provided in paragraph C. above.

F. Pay for Sunday Work

- (1) A full-time employee, and full-time and part time screeners, will receive pay at the employee's basic rate plus premium pay at a rate of 25 percent of his or her rate of basic pay for each hour of regularly scheduled non-overtime work performed on a Sunday. An employee must perform work on Sunday in order to receive Sunday premium pay.
- (2) Part-time employees, other than screeners, are not eligible to receive premium pay for Sunday work.
- (3) Sunday Pay is in addition to overtime, night pay differential, or holiday pay, and is not included in the rate of basic pay used to compute overtime, night pay differential, or holiday pay.

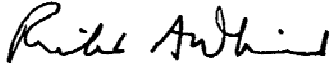
G. Law Enforcement Availability Pay

Federal Air Marshals and Criminal Investigators shall receive LEAP equal to 25 percent of the combination of basic and locality pay, to ensure they are available for substantial unscheduled duty in excess of the 40-hour workweek.

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7. EFFECTIVE DATE & IMPLEMENTATION:

This policy is effective immediately upon signature.



Richard A. Whitford
Assistant Administrator for Human Resources

November 16, 2004
Date

Filing Instructions:	File with OHR Management Directives
Effective Date:	November 16, 2004
Review Date:	November 16, 2005
Distribution:	TSA Affiliated HR Offices, Associate Administrators, Assistant Administrators, and Office Directors
Point Of Contact:	PG&S/OHR. Jan B. Karicher or DeShawn Shepard, 571-227-2469

