

KANSAS ADJUTANT GENERAL'S DEPARTMENT

MEMORANDUM FOR ALL STATE EMPLOYEES

FROM: TAG-SHRO

SUBJECT: Overtime and Other Compensation
TAG Policy No. 034-07

EFFECTIVE DATE: March 1, 2017; amended 1/18; amended 9/18; amended 3/19

POLICY STATEMENT: It is the policy of the Adjutant General's Department to comply with State and Federal laws and regulations related to overtime compensation and to establish guidelines for the fair and equitable administration of overtime and other forms of compensation while meeting the operational needs of the Department.

DEFINITIONS:

Additional Regular Pay. Hours paid in excess of 40 hours in a work week at the employee's regular hourly rate when hours were not actually worked and do not qualify for overtime are Additional Regular Pay.

Call-In Call-Back. Calling an employee into work on a regular day off or back to work following a regular scheduled work day is Call-In Call-Back.

Compensatory Time. Time off, in lieu of monetary payment, for overtime worked which is computed at the rate of one and a half hours per one hour worked is Compensatory Time.

Director. The employee who manages a group of employees who make up an office or department of the Adjutant General's Department is the Director.

Established Core Hours. The Established Core Hours for the Adjutant General's Department is 6:00 a.m. to 6:00 p.m. The work schedule for employees must begin and end within the Core Hours unless the work of the position requires shift or other non-standard work schedules.

Established Work Shifts. Established Work Shifts for the Adjutant General's Department are used for the 24 hour operation of work units, as required by agreement. Established Work Shifts are as follows: 1st Shift, 7:00 am to 3:00 pm; 2nd shift, 3:00 pm to 11:00 pm; and 3rd shift, 11:00 pm to 7:00 am.

Equivalent Time Off. Time off taken by an employee on an hour-for-hour basis by rearranging work hours in a Workweek to avoid the payment of overtime is Equivalent Time Off.

Exempt. Employees in a position of which the work has been determined not eligible for overtime compensation under the Fair Labor Standards Act are Exempt.

Fair Labor Standards Act. The federal law that governs hour and wage requirements and employee eligibility for overtime is the Fair Labor Standards Act (FLSA).

Holiday Compensation. Pay or Holiday Compensatory Time at the time-and-a-half rate for hours worked on a Legal or Officially Observed holiday is Holiday Compensation.

Holiday Compensatory Time. Time off, in lieu of monetary payment, for hours worked on a holiday which is computed at the rate of one and a half hours per one hour worked on a Legal or Officially Observed Holiday is Holiday Compensatory Time.

Holiday Credit. Pay or credit for paid time off at a straight-time rate is Holiday Credit. Holiday Credit may not be used in the calculation of overtime.

Legal Holiday. Paid days off for benefits eligible employees designated annually by the Governor in observance of a Holiday or special event are Legal Holidays.

Military Activation Pay. A one-time payment to current benefits-eligible, Executive Branch employees in the military reserves who are activated and deployed for more than 30 consecutive days is Military Activation Pay.

Military Pay Differential. Differential pay available for employees in the Executive Branch to make up for wages lost as a result of activation to military duty in excess of 30 days when their military pay is less than their state job is Military Pay Differential.

Non-Exempt. Employees in a position of which the work has been determined to be eligible for overtime compensation under the Fair Labor Standards Act are Non-Exempt.

Officially Observed Holiday. When a Legal Holiday falls on a Saturday, the preceding Friday is the Officially Observed Holiday. When a Legal Holiday falls on a Sunday, the following Monday shall be the Officially Observed Holiday.

Overtime Hours. Hours worked in excess of 40 hours within the Standard Workweek are Overtime Hours.

Paid Leave. Time away from work for which the employee is compensated such as vacation leave, sick leave, holiday leave, funeral leave, compensatory time, and administrative leave is Paid Leave.

SHARP. A database used for all human resource functions related to State of Kansas employment is the Statewide Human Resource Payroll System (SHARP).

Shift Differential. Premium pay for work schedules that fall in part, or totally outside of the Established Core Hours for the agency is Shift Differential. The Established Core Hours for the Adjutant General's Department is 6:00 am to 6:00 pm.

Standard Work Schedule. A schedule of five eight-hour days, Monday through Friday, set or approved by the Supervisor is a Standard Work Schedule.

Standard Workweek. The seven day period beginning at 12:01 am Sunday morning, and ending at 12:00 am the following Sunday morning is a Standard Workweek. A Standard Workweek shall consist of 40 hours for a full-time employee, less than 40 hours for a part-time employee.

Stand-By. A period of time outside a Non-Exempt employee's regular work hours, during which the employee is required, at agency direction, to remain available to report to work within a specified period time is Stand-By.

Temporary Position. A position limited to 999 hours of employment in a 12-month period, which begins on the employee's first day of employment, is a Temporary Positions. Temporary positions are covered by the Fair Labor Standards Act (FLSA), but are not benefits eligible.

Tour of Duty. The period of time during which an employee is considered to be on duty for the purpose of determining compensable hours is a Tour of Duty. This term is reserved for firefighters who work 24 hour schedules and are normally scheduled 48 hours on duty and 96 hours off duty.

Work Site. The place an employee is required to report to work and any designated meeting place for the purpose of picking up a vehicle, meeting with other employees, receiving instructions or materials, or performing any other work related task is a Work Site.

PROCESS GUIDELINES:

Overtime Eligibility

Employees performing the work of a position designated as Non-Exempt by the provisions of the Fair Labor Standards Act (FLSA) are eligible to be paid overtime for all time worked in excess of 40 hours per work week.

The FLSA determination for a position is established by the work of the position and is identified on position descriptions and in SHARP records.

All time worked in excess of 40 hours per work week shall be calculated at a rate of one- and-one-half times the regular hourly rate of the employee.

Employees covered by the International Association of Fire Fighters (IAFF) Local 64 shall follow the provisions of the current Memorandum of Agreement related to Overtime and Compensation for Fire Fighters

Authorization for Overtime Work

Overtime shall be authorized by the Director only when essential to the operation and mission of the Agency and must be approved by the Director in advance of working.

Once worked, all hours worked must be compensated; however, working overtime without prior approval by the Director may result in disciplinary action up to and including termination.

The Adjutant General reserves the right to alter daily and weekly work schedules and establish emergency work schedules when necessary for the efficient operation of the Agency.

Overtime, Equivalent Time Off, and Compensatory Time

The Fair Labor Standards Act allows that overtime be compensated with Pay, Compensatory Time, or avoided altogether by rearranging the work week to give Equivalent Time off as determined by the Adjutant General.

If it is necessary for the employee to work hours exceeding the number of regularly scheduled hours in a work day, the supervisor shall rearrange the employee's work schedule for that week by requiring the employee to take Equivalent Time Off. Equivalent Time Off may also be given at the request of the employee and approved by the supervisor.

Compensatory Time

In most situations, if an employee is required to work over 40 hours in a work week, compensation in the form of Compensatory Time is **required**. Compensatory time is earned at the rate of one-and-one-half hours for each hour of overtime worked.

All Employees shall be limited to a total balance of 40.0 hours of Compensatory Time. Employees who have accrued 40 hours of Compensatory Time **shall not be approved** to accrue additional Compensatory Time until their balance is used down. Until such time, employees will be required to take equivalent time off.

All comp time hours in excess of the maximum of 40 shall be used prior to December 30th of each year.

If an employee is required and approved to work hours exceeding the number of regularly scheduled hours in the work week in order to meet a project deadline or as part of a designated emergency, the Director may:

- Allow the use of Compensatory Time even if it exceeds the 40.0 hour limit. Upon completion of the project or designated emergency the Manager or Supervisor shall meet with the employee to develop a plan for the employee to use their Compensatory Time in order to maintain the 40.0 hour maximum limit requirement for Compensatory Time.
- Approve the payment of overtime provided their budget allows. Such approval should be sent to SHRO Director.

Directors may require an employee to use part or all of their Compensatory Time within a reasonable period of time, by providing advanced written notice of 14 working days and designating the date by which a specified number of hours are to be used. This advanced written notice shall be forwarded to SHRO for placement in employee personnel file.

Employees who either fail to request or refuse to use Compensatory Time as required in writing by their Director, or TAG policy, may be subject to disciplinary action up to and including termination.

All accrued Compensatory Time shall be used or paid out when an employee leaves the agency, moves to a different division within the agency, or when the employee moves from a Non-Exempt position to that of an Exempt position.

Employees who have accrued Compensatory Time may request the use of their compensatory time and shall be permitted to use the time requested provided it does not unduly disrupt the operations of the agency.

All overtime compensation shall be reported and used in one-quarter hour increments.

Time documented as Paid Leave, Holiday Leave, Stand-by pay, Holiday Compensatory Time or Compensatory Time shall not count towards the 40 hours of work used for the calculation of overtime. Only actual hours worked qualify for overtime pay.

Holiday Compensation

The Adjutant General reserves the right to require some or all employees to work on a Legal Holiday, an Officially Observed Holiday, or both.

Work on Holidays shall be **authorized only when essential** and must be approved in advance by the Director, with notice of approval sent to the State Human Resource Director. All benefits eligible employees are eligible for Holiday Compensation.

Benefits eligible, Non-Exempt employees who are **required** to work on a Legal Holiday or an Officially Observed Holiday shall receive Holiday Credit equal to their normally scheduled hours of work, in addition to Holiday Compensation for any hours they are required to work, at the rate of one-and-one-half times their regular rate of pay. This time will be compensated as Equivalent Time off or Holiday Compensatory time.

Directors may approve the payment of Premium Pay for employees **required** to work on Legal or Officially Observed Holidays provided their budget allows. Such approval should be sent to SHRO Director.

Non-Exempt employees required to work on both the Legal Holiday and the Officially Observed Holiday shall receive Holiday Compensation for one of the two days. If the number of hours worked on the two days is not the same, the employee shall receive Holiday Compensation for the day on which the employee worked the greater number of hours.

Holiday Compensation shall be rounded and reported in one-quarter hour increments. Holiday Compensatory Time used shall be rounded to the nearest quarter hour for Non-Exempt employees and shall be in half-day increments for Exempt employees.

Holiday Compensation shall be in addition to any overtime compensation or regular pay owed the employee for hours worked. Only hours actually worked on a Holiday shall count as time worked when computing overtime within the 40-hour work week.

Employees shall be limited to a total of 40.0 hours of Holiday Compensatory Time. All Holiday Comp time balances shall be used prior to April 1st of each year.

Directors may require an employee to use part or all of their Holiday Compensatory Time within a reasonable period of time, by providing advanced written notice of 14 working days and designating the date by which a specified number of hours are to be used. This advanced written notice shall be forwarded to SHRO for placement in employee personnel file.

Employees who either fail to request or refuse to use Holiday Compensatory Time as required in writing by their Director, or TAG policy, may be subject to disciplinary action up to and including termination.

Exempt Employees who are required to work on a Legal Holiday or Officially Observed Holiday may receive Holiday Compensatory time with prior approval of the department Director. Exempt employees shall take Holiday Compensatory time in either half-day or full-day increments.

Stand-By Compensation

The Adjutant General's Department reserves the right to require a Non-Exempt employee to be on Stand-By in situations where a probability of emergency recall of employee(s) exists. Employees on Stand-By shall be available at agency direction to remain available to the agency, within a specified response time, for recall to perform necessary work.

Non-Exempt employees placed on Stand-By shall be compensated at the rate of \$1.00 per hour. Employees covered by the KOSE Memorandum of Agreement shall be compensated at the rate of \$2.00 per hour.

Stand-By may only be compensated in quarter hour increments. Employees shall not be on/paid Stand-By during the employee's regular scheduled hours of work, during their lunch period, or while on **any** type of leave including Vacation, Sick Leave and Compensatory time.

At the discretion of the manager, an employee may be placed on Stand-By during an Official State Holiday while receiving Holiday Credit if there is a high probability of an emergency occurring. Such instances shall be determined on a case-by-case basis and must be pre-approved by the manager.

Employees shall be compensated for all hours actually worked at their current rate of pay. Only hours actually worked shall be used in determining eligibility for overtime compensation.

Time during which a Non-Exempt employee is restricted to a specific telephone number at a location designated by the employer, or on the employer's premise, in order to remain personally available to the employer shall be considered hours worked and the employee shall be compensated at the employees regular rate of pay instead of receiving Stand-By compensation.

Any Non-Exempt employee on Stand-By who is not available when called, and who does not provide reasonable justification for failure to report when called, shall lose compensation for the entire Stand-By period and may be subject to disciplinary action.

Employees removed from work for disciplinary action or on Administrative Leave pending the outcome of an investigation shall not be allowed to be placed on Stand-By.

Call-in/Call-back Compensation

The Adjutant General's Department reserves the right to call an employee in to work on a regular day off or to call an employee back to work after a regular work schedule has ended.

Non-Exempt employees who are eligible for overtime and who are called in to work on a regular day off, or called back to work after a regular work schedule has ended, shall be paid their regular rate of pay for the hours worked or for a minimum of two hours, whichever is greater, except when the employee is called in or called back during the two-hour period immediately prior to the beginning of the employee's next regularly scheduled work shift, or the employee was on Stand-By when called in or called back to work.

Only hours actually worked shall count in determining eligibility for and the calculation of overtime.

If an employee who is **not** on Stand-By is called in to work more than once between the end of the employee's work schedule and the start of the employee's next work schedule, the employee shall be paid from the start of the first call-in to the end of the last call-back.

Employees **not** on Stand-By, who are called into work on their scheduled day(s) off will receive Call-In pay based on each day individually, and not combined days. Calculation for Call-In/Call-Back for consecutive scheduled days off shall be from 12:01am to 12:00 am for each day.

Shift Differential Compensation

Shift differential shall be paid to any Non-Exempt employee who is eligible for overtime and, due to the operational needs of the Agency, is assigned an Established Work Shift that falls in part or entirely outside of the designated Core Hours for the Agency, which includes 2nd and 3rd Established Work Shifts.

Shift Differential shall be paid for all hours actually worked which fall within an Established Work Shift eligible for Shift Differential. Rate of pay for shift differential shall be established by Governor's Executive Directive or by Memorandum of Agreement (MOA).

Shift Differential shall not be paid to an employee for time on any type of leave or holiday, or when the employee works unscheduled hours immediately before or after a normal day shift.

Shift Differential shall not be paid when a regularly scheduled 2nd or 3rd shift employee works a partial shift during the day (1st) shift.

Shift Differential does not apply to Fire Fighters who work 24 hour shifts as part of a Tour of Duty.

Military Compensation

Military Activation Pay may be approved to offset any financial burden that may occur because of mobilization. Employees must submit military orders to the Office of Human Resources in order to be approved for Military Activation Pay. Activation Pay is a one-time payment.

Military Pay Differential may be paid for State employees in the Executive Branch to make up for wages lost as a result of activation to military duty in excess of 30 days.

Considered in the calculation of Military Pay Differential will be military basic pay as well as allowances such as housing, subsistence, rations, family separation, and any other pay and allowances received as a result of activation except for hazardous duty allowances. Approved employees shall receive the differential for the duration of their federal service or until Executive Directive No. 05-356 is modified or rescinded.

Employees must submit military orders, and their latest Defense Finance and Accounting Service Leave and Earnings Statement (LES) to the Office of Human Resources for the calculation of Military Pay Differential. An IRS Form W-9 will be required at the time of application.

Travel Time

Travel that keeps a non-exempt employee away from home overnight is worktime when it cuts across the employee's Standard Work Schedule, since the employee is simply substituting travel for other duties. This also applies to employees **required** to travel on Saturday and/or Sunday.

Should weekend travel be required, the resulting Overtime must be approved by the Director in advance of working/travel, or the employee shall be required to rearrange their workweek to avoid the accumulation of overtime.

The following **shall** count as time worked:

- All travel in a private or state vehicle, regardless of whether the employee is the driver or passenger, from Work Site to Work Site.
- Travel by private or state vehicle between the employee's home, overnight accommodations, public transportation, or Work Site when the starting place and the destination are in different towns , and at least one is neither the town where the employee lives or is headquartered.
- Time spent traveling by public transportation for work related activities, provided the employee does not use these means of transportation for normal commuting from home to work, or work to home.
- Any type of travel required for work during the employees regular work hours.

The following travel time **shall not** count as time worked:

- Travel from home to the employee's regular work place or other designated Work Site within the same town, and travel back to the employee's home.
- Any travel time used outside of the employees normal work hours used to benefit or accommodate the employee, including Saturdays and Sundays.
- Time spent when the employee is not engaged in work, such as meal times, sightseeing, shopping or entertainment shall not be counted as time worked.

Meetings and Training

Most meetings and training are counted as time worked. In order for such time **not** to be considered work time the following conditions must exist:

- Attendance is strictly voluntary.
- The course, meeting, or training is not directly related to enhancing the employee's performance of the employee's current job.
- The employee does not perform any productive work while attending

Responsibilities

Managers shall be responsible for monitoring and controlling the use of overtime and other forms of compensation, making required notifications to employees, and requesting approvals when required by this Policy.

Supervisors shall be responsible for monitoring and controlling the use of Compensatory Time and reporting all time worked by employees. Failure to accurately review and monitor hours reported on time documents may lead to disciplinary action up to and including termination

Supervisors shall not make changes to the timesheet of an employee without first consulting with the employee.

It is the responsibility of each employee to correctly document hours worked, leave used, and travel time taken on their timesheet accurately and per agency policy. Failure to accurately document time worked and provide leave request documents in a timely manner may lead to disciplinary action up to and including termination.

AUTHORATIVE REFERENCES:

K.A.R. Article 5 – “Compensation”

K.A.R. 1-5-24 “Overtime”

K.A.R. Article 9-“Hours; Leave; Employee-Management Relations”

K.A.R. 1.9.2, “Holidays”

U.S. Department of Labor, “Fair Labor Standards Act”

Firefighter Memorandum of Agreement, October, 2015

KOSE Memorandum of Agreement

SHARP Infolist, “Stand-By”, January, 2016

Executive Directive No. 05-356