

**Office of the State Public Defender
Administrative Policies
Human Resources**

Subject: Overtime and Compensatory Time for Non-Exempt Employees	Policy No.: 510
Title	Pages: 5
Section:	Last Review Date: 11-20-17
Effective Date: 5-1-06	Revision Date: 11-20-17

1. PURPOSE

This policy establishes uniform procedures for administering overtime compensation and non-exempt compensatory time. This policy also directs the Office of the State Public Defender to comply with the Fair Labor Standards Act (FLSA) and Montana's Wage and Hour Laws when administering overtime compensation or non-exempt compensatory time.

2. SCOPE

This policy covers positions identified as non-exempt from the FLSA in the Office of State Public Defender (OPD) to comply with the FLSA, its regulations (29 CFR 553), the state's Overtime and Non-exempt Compensatory Time Policy and this policy in the administration of overtime compensation and non-exempt compensatory time. Compensatory time for employees exempt from the FLSA will be administered consistent with the provisions found in the state's Exempt Compensatory Time Policy.

Any collective bargaining agreement providing greater overtime or non-exempt compensatory time benefits supersede this policy.

3. PROCEDURE

Nothing in this policy guarantees an employee in a non-exempt position will be allowed to work time resulting in the payment of overtime or the accrual of non-exempt compensatory time.

The Office of the State Public Defender has determined that employees will have an option to accrue and use non-exempt compensatory time. Employees will voluntarily choose between accruing non-exempt compensatory time and receiving overtime compensation.

All covered employees must complete the "Overtime/Compensatory Time Selection" agreement (Attachment A) at the time of hire to make their election to receive overtime compensation or accrue non-exempt compensatory time.

Employees who may want to change their initial election will be required to complete the Overtime/Compensatory Time Selection (Attachment A) agreement. These changes will be made effective at the beginning of the pay period following the receipt of the agreement by the Human Resource Office.

Overtime/Non-exempt Compensatory Time

An employee in a non-exempt position must receive advance approval from their supervisor to work hours resulting in the payment of overtime compensation or the accrual of non-exempt compensatory time. A supervisor may adjust the work schedule of an employee in a non-exempt position for a workweek to prevent the employee from earning overtime compensation or accruing non-exempt compensatory time.

Employees who elect to be paid overtime will receive overtime compensation for all time in a pay status over 40 hours in a workweek. Employees will receive overtime compensation at a rate of one and one-half times the employee's regular hourly rate.

Employees who elect to accrue non-exempt compensatory time will accrue at the rate of one and one-half hours of non-exempt compensatory time for each hour in a pay status over 40 hours in a workweek.

Administering Overtime and Non-exempt Compensatory Time

1. When administering overtime and non-exempt compensatory time, OPD management must:
 - a. require advance approval, for an employee in a non-exempt position to work hours resulting in the payment of overtime compensation or the accrual of non-exempt compensatory time;
 - b. require employees to take non-exempt compensatory time off in no less than one-half hour increments;
 - c. pay out at the employee's regular rate unused non-exempt compensatory time when an employee changes from a non-exempt position to an exempt position; transfers from one office to another office; transfers to another state agency; or terminates employment for any reason, including for cause;
 - d. and follow the record keeping requirements in the Employee Records Management Policy (2.21.6606 through 2.21.6617 and 2.21.6622, ARM).
2. OPD may, at any time, pay cash for all or any portion of a covered employee's accrued non-exempt compensatory time balance.
3. Employees are responsible for recording overtime and non-exempt compensatory time on a timesheet in no smaller than one-half hour increments.
4. Employees may not accrue more than 120 hours of non-exempt compensatory time. If an employee accrues 120 hours of non-exempt compensatory time, the employee will earn overtime compensation for additional time in a pay status in excess of 40 hours in a workweek.

- a. All hours worked in a pay status including holiday , are counted as hours worked for the purpose of calculating a workweek for overtime pay requirements. A supervisor may adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or the accrual of non-exempt compensatory time.
- b. Non-exempt compensatory time must be taken off in no less than one-half hour increments. The employee's immediate supervisor must approve requests for use of compensatory time off in advance.

4. RESOURCES

1. Link to the Fair Labor Standards Act of 1938, as amended – <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>
2. Link to Title 29, CFR, Chapter V – http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm
3. Link to [Title 29, CFR, Chapter V, Part 553](#), Application of the Fair Labor Standards Act to Employees of State and Local Governments

5. DEFINITIONS

All definitions under 2-18-101, MCA apply to this policy. The following definitions also apply:

Non-exempt Position: A position subject to the overtime provisions of the Fair Labor Standards Act (FLSA), as amended, the regulations adopted by the U.S. Department of Labor's Wage and Hour Division (Title 29, CFR, Chapter V, as amended), and Montana's Wage and Hour Laws. It does not include positions exempt from the overtime pay provisions of the FLSA as defined in Title 29, CFR, Chapter V, Part 541.

Non-exempt compensatory time: Time accrued by an employee in a non-exempt position for all time in a pay status in excess of 40 hours in a workweek. The time accrued may be taken as approved time off at a later date or paid out in accordance with this policy and federal requirements.

Non-exempt or covered employee: An employee subject to the overtime provisions of the FLSA and its regulations. It does not mean certain employees exempt from the overtime provisions of the FLSA in a position designated as executive, administrative, professional, or outside salesmen, as these terms are defined in 29 CFR 541.

Overtime: Time in a pay status by an employee in a non-exempt position exceeding 40 hours in a workweek.

Workweek: A regular, recurring period of 168 hours that occurs over seven consecutive 24-hour periods. In Montana state government, the workweek begins at 12:00 a.m. on Saturday and ends at 11:59 p.m. on Friday, unless defined otherwise by agency management or a collective bargaining agreement.

6. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about the administration of overtime compensation or non-exempt compensatory time in lieu of overtime compensation should be discussed with your immediate supervisor or with the Human Resource Officer at:

Office of the State Public Defender
Central Services Division
44 West Park
Butte, MT 59701

Phone 406-496-6080

ATTACHMENT A

OVERTIME/COMPENSATORY TIME SELECTION

For completion by employees in non-exempt status.

NAME: _____

JOB TITLE: _____

FISCAL YEAR: _____

Select one of the following options for your preferred compensation of overtime worked for the fiscal year, or until a new form is submitted.

1. Overtime Pay: _____
(Pay at one and one-half times your hourly rate.)
2. Compensatory Time: _____
(Time off at one and one-half hours for every overtime hour worked.)

I understand that the Office of the State Public Defender management reserves the right to approve the granting of FLSA compensatory time in lieu of overtime pay. The Office of the State Public Defender may at any time pay cash for all or any portion of a covered employee's accrued FLSA compensatory time. I may submit a selection form reversing my previous selection at any time.

_____ Employee's Signature	_____ Date
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APPROVED BY:

_____ Supervisor's Signature	_____ Date
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This form must be signed and returned to:
Office of the State Public Defender
Central Services Division
44 West Park
Butte, MT 59701