

PREMIUM PAY FOR GENERAL SCHEDULE EMPLOYEES

INTRODUCTION

Premium pay for employees covered by the General Schedule (GS) is computed under subchapter V of chapter 55 of title 5, United States Code (U.S.C.), and 5 CFR part 550, subpart A. Premium pay includes pay for overtime, night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, or law enforcement availability pay. Premium pay also includes the dollar value of earned hours of compensatory time off, but excludes overtime pay and compensatory time off earned by employees under the Fair Labor Standards Act (FLSA). Because a work schedule drives premium pay entitlements, work schedules must specifically reflect an employee’s actual work requirements, including any period of regularly scheduled overtime work.

This reference guide presents an overview of premium pay for GS employees and includes answers to Frequently Asked Questions.

COVERAGE

The title 5 premium pay provisions, with the exception of overtime pay, cover both exempt and nonexempt GS employees. Employees who are exempt under the FLSA are covered by the title 5 overtime rules, while employees who are FLSA-nonexempt are covered by the FLSA overtime provisions in 5 CFR part 551.

OVERTIME PAY

The following chart compares and contrasts some of the overtime pay rules for FLSA exempt and FLSA nonexempt GS employees.

Rules	Exempt GS Employees <i>(5 CFR part 550, subpart A)</i>	Nonexempt GS employees <i>(5 CFR part 551, subparts D & E)</i>
Hours of work	Time spent in principal activities, time spent in preshift or postshift activities, leave with pay, time in travel status, etc.	Similar. All time spent for the benefit of the agency or under the control and direction of the agency. Time on-duty, “suffered or permitted” time, waiting or idle time, hours of paid non-work (e.g. paid leave, holidays, compensatory time off, or excused absence).
Authorization of overtime work	Overtime work means hours of work in excess of 8 hours in a day or 40 hours in an administrative week that is officially ordered or approved and performed by the employee. Overtime work included in a regularly scheduled administrative workweek may be	Ordinarily overtime work is ordered or approved, but may be “suffered or permitted.”



	ordered or approved only in writing by a delegated official.	
Rate of basic pay	Includes any locality payment or special rate supplement.	Same
Overtime hourly rate	<p>If an employee's hourly rate of basic pay does not exceed the GS-10, step 1, rate, the overtime hourly rate is 1 1/2 times the employee's hourly rate of basic pay.</p> <p>If an employee's hourly rate of basic pay is more than the GS-10, step 1, rate, the overtime hourly rate is the greater of: 1 1/2 times the GS-10, step 1, rate, or the employee's hourly rate of basic pay.</p>	<p>Paid at one times the employee's straight time pay rate, plus one-half times the employee's hourly regular rate. Straight time rate is the rate paid for the position, minus any differentials or premiums except <i>annual</i> premium pay. Hourly regular rate is the "total remuneration" divided by all hours of work in the week for which remuneration is paid (includes most types of premium pay).</p>
Crediting regularly scheduled overtime work	Paid for every minute of regular overtime work.	Same
Crediting irregular or occasional overtime work	Paid in 15 minutes intervals, odd minutes rounded up or down to the nearest full fraction of an hour.	Same.
Crediting call-back overtime work	Credited with a minimum of 2 hours of irregular or occasional overtime work when an employee is required to return to the workplace to perform unscheduled overtime work on a workday or on a nonworkday. Paid in money or compensatory time off.	Same.
Biweekly and annual maximum earnings limitations	Employees may receive premium pay only to the extent that the total amount of basic pay and premium pay in any biweekly pay period does not exceed the greater of the biweekly rate payable for GS-15/10 or for level V of the Executive Schedule, except when an agency applies an annual premium pay cap for employees performing certain emergency or mission-critical work.	Premium pay excludes overtime pay and compensatory time off in lieu of overtime pay earned by FLSA-nonexempt employees.
Training	Time spent in training directly related to the work of the agency is considered hours of work. Premium pay for the	Time spent in training during regular working hours is hours of work. Training outside regular working

	period of training is prohibited unless an exception at 5 CFR 410.402 applies.	hours is hours of work if employee is required to participate in order to improve performance in current position. Cite: 5 CFR 551.423
Travel time	Time spent traveling is hours of work if travel occurs during the regularly scheduled workweek. Travel outside of regular duty hours is not hours of work unless it meets a situation specified in 5 CFR 550.112(g).	Time spent traveling counts as hours of work if travel occurs during regular working hours or during corresponding hours on a non-workday, or if employee is required to drive a vehicle, etc. Cite: 5 CFR 551.422

OVERTIME RATES

The following chart illustrates the circumstances, entitlements, and legal authorities for overtime pay for both nonexempt and exempt General Schedule employees:

IF	WHEN	THEN THE EMPLOYEE IS ENTITLED TO RECEIVE	OR	LEGAL AUTHORITY
a nonexempt GS employee is regularly scheduled to perform	overtime work,	the “straight-time rate of pay” times all overtime hours worked, and 1/2 times his/her “hourly regular rate of pay” for all overtime hours worked.		5 U.S.C. 5542(c), 29 U.S.C. 201 et seq. 5 CFR 551, subpart E
a nonexempt GS employee performs	irregular or occasional overtime , which is not part of an employee’s regularly scheduled administrative workweek,	the “straight-time rate of pay” for all overtime hours performed, plus 1/2 times his/her “hourly regular rate of pay” for all overtime hours worked;	compensatory time off <u>at the employee’s request</u> for an equal amount of irregular or occasional overtime.	Above cites and 5 U.S.C. 5543, 5 CFR 551.531
an exempt GS employee is regularly scheduled to perform	overtime work, that is officially ordered or approved, and performed by the employee,	1 1/2 times hourly rate of basic pay (provided that their basic rate does not exceed the minimum rate for GS-10) OR the greater of: 1 1/2 times the GS-10 step 1 rate or the employee’s		5 U.S.C. 5542(a), 5 CFR 550.111-114

		hourly rate.		
an exempt GS employee performs	irregular or occasional overtime work, which is not part of an employee's regularly scheduled administrative workweek,	1 1/2 times hourly rate of basic pay (provided that their basic rate does not exceed the minimum rate for GS-10) OR the greater of: 1 1/2 times the GS-10 step 1 rate or the employee's hourly rate.	compensatory time off <u>at the employee's request</u> . If an employee's rate of basic pay exceeds GS-10, step 10, an agency may direct an employee to take compensatory time off in lieu of overtime pay.	Above cites and 5 U.S.C. 5543, 5 CFR 550.114
an exempt/nonexempt GS employee works	more than 8 hours in a day, but not necessarily more than 40 hours in a week,	half-time overtime, that is, full pay for hours of work up to 40 hours in week and half-pay for hours of work in excess of 8 in a day. Such hours also count towards the basic 40-hour workweek.		
an exempt GS employee on a first 40-hour tour who meets the "professional or technical engineering or scientific" requirement or whose rate exceeds GS-10, step 1, works	over 40 hours in a week, over 8 hours in a day,	overtime pay in accordance with applicable laws and regulations. regular hourly pay, not overtime.		5 U.S.C. 5542(a), 5 CFR 550.111(d)
an exempt / nonexempt GS employee on a first-40 hour tour whose rate does not exceed GS-10 step 1, works	over 8 hours in a day,	half-time for the hours of work in excess of 8 in a day. Such hours also count towards the basic 40-hour workweek.		5 U.S.C.5542(c)

PREMIUM PAY FOR WORKING CERTAIN HOURS

Definitions

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by the employee, including any applicable locality payment or special rate supplement, before any deductions and exclusive of additional pay of any kind.

Regularly scheduled work means work that is scheduled in advance of an administrative workweek, including overtime work scheduled before the beginning of the administrative workweek.

Night Pay

- Night pay is a 10 percent differential paid to an employee for regularly scheduled work performed at night between the hours of 6 p.m. and 6 a.m.
- It is computed as a percentage of an employee's rate of basic pay
- Payment continues when an employee is excused from nightwork on a holiday or other nonworkday, on official travel, temporarily assigned to a different daily tour of duty that includes nightwork, or on paid leave when the total amount of leave in a pay period is less than 8 hours.
- References: 5 U.S.C. 5545(a); 5 CFR 550.103; 5 CFR 550.121-122

Sunday Premium Pay

- An employee is entitled to Sunday premium pay equal to 25 percent of his or her rate of basic pay for each hour of Sunday work.
- "Sunday work" is nonovertime work performed by an employee during a regularly scheduled daily tour of duty when any part of that tour is on a Sunday.
- Employees are not entitled to Sunday premium pay unless they perform **actual** work during their Sunday tour of duty.
- Intermittent employees are not eligible for Sunday premium pay.
- References: 5 U.S.C. 5546(b); 5 CFR 550.103, 550.171-172

Holiday Premium Pay

- Holiday work means nonovertime work performed by an employees during a regularly scheduled daily tour of duty on a holiday.
- Holiday premium pay is equal to an employee's rate of basic pay for each nonovertime hour worked.
- An employee who is assigned to duty on a holiday is entitled to pay for at least 2 hours of holiday work.
- References: 5 U.S.C. 5546(b); 5 CFR 550.103, 550.131 & 550.132

PREMIUM PAY FOR WORKING UNDER CERTAIN CONDITIONS

GS employees in positions that involve substantial amounts of overtime work may be eligible for an annual premium pay. The following information highlights some of the rules governing standby duty pay, administratively uncontrollable overtime pay, and law enforcement availability pay.

Standby Duty Pay

- May be approved for an employee in a position requiring him or her to remain at, or within the confines of, the duty station for more than 40 hours per week, a substantial part of which consists of remaining in a standby status rather than performing work.
- Standby duty pay is determined as a percentage of up to 25 percent of that part of an employee's rate of basic pay that does not exceed the rate of basic pay for GS-10, step 1.
- The rate is based on the number of hours in the tour of duty, number of actual hours of work during the tour, and the number of Sundays the employee works.
- Paid in lieu of other premium pay except unscheduled overtime.
- Nonexempt GS employee are compensated for regularly scheduled hours of work in excess of 40 hours a week by the payment of annual premium pay for regularly standby duty plus .5 times the employee's hourly regular rate of pay for all regularly scheduled overtime hours worked.
- Payment continues when on leave with pay; temporarily assigned to other duties that would not otherwise warrant the payment of standby duty for up to 10 consecutive workdays and for a total of not more than 30 workdays in a calendar year; attending approved advanced training for an aggregate of not more than 60 workdays in a calendar year.
- Standby duty pay is not base pay for computing non-foreign and foreign allowances and differentials.
- References: 5 U.S.C. 5545 (c)(1); 5 CFR 550.103, 5 CFR 550.141-144 and 5 CFR 550.161-164.

Administratively Uncontrollable Overtime (AUO) Pay

- May be approved for an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular, unscheduled overtime work, with the employee recognizing a compelling need to continue working.
- Instead of paying premium pay for irregular or occasional overtime work on an hourly basis or granting compensatory time off, agencies may pay premium pay on an annual basis to employees who perform AUO work,
- AUO pay is determined as a percentage of an employee's rate of basic pay, equal to 10-25% of an employee's rate.
- The rate of AUO is based on the average number of hours of irregular or occasional overtime work performed per week.
- Paid in lieu of other types of premium pay except regularly scheduled overtime, night, Sunday, and holiday pay.
- Agencies may not pay AUO for customary and routine work duties and work duties that are primarily administrative or occur in non-compelling circumstances.
- AUO pay continues during periods of paid leave; for up to 10 consecutive workdays for a total of not more than 30 workdays in a calendar year when temporarily assigned to duties that do not warrant AU pay; for up to 30 consecutive workdays for a total of not more than 90 days in a calendar year

during a temporary assignment that is directly related to an emergency declared by the President; and for an aggregate of not more than 60 workdays in a calendar year to attend approved advanced training related to the duties of the position.

- AUO pay is not base pay for computing non-foreign and foreign allowances and differentials.
- References: 5 U.S.C. 5545(c)(2); 5 CFR 550.151-154 and 5 CFR 550.161-164

Law Enforcement Availability Pay

- Must be paid to certain Federal law enforcement officers (LEOs) who are criminal investigators for unscheduled duty hours beyond the 40-hour workweek.
- Unscheduled duty means hours during which a criminal investigator performs work, or is determined to be available to perform work, that are not part of the 40-hour basic workweek, or regularly scheduled overtime hours.
- An investigator is considered to be available to work when the agency directs the employee to be available during designated periods to meet agency needs or when the investigator places himself or herself in an availability status to meet agency needs.
- To be eligible to receive LEAP, a criminal investigator must maintain an annual average of 2 hours or more of unscheduled duty hours per regular workday.
- Criminal investigators and their supervisors must certify annually that an investigator has met and is expected to meet the substantial hours requirement in the upcoming year.
- LEAP premium pay is fixed at 25 percent of a criminal investigator's rate of basic pay. The premium covers the first 2 hours of overtime work on any regular workday, all irregular overtime hours, and certain non-work hours when an employee is placed in an availability status.
- Generally availability pay is an entitlement that an agency must provide if the required conditions are met, but is optional in Offices of Inspectors General that employ fewer than five criminal investigators.
- References: 5 U.S.C. 5542(d) and (e), 5545a; 5 CFR 550.181-187, 5 CFR 550.103(definitions of criminal investigator and law enforcement officer), 5 CFR 550.111(f)

FREQUENTLY ASKED QUESTIONS

OVERTIME

1. What is a “rate of basic pay” for calculating title 5 premium payments?

For premium pay purposes, a “rate of basic pay” includes any applicable locality payment or special rate supplement. To find an hourly rate of basic pay, divide an annual rate of basic pay by 2,087 hours and round the result to the nearest cent, counting one-half cent and over at the next higher cent. (See 5 CFR 550.106(d)(1).)

2. An exempt employee took 3 hours of sick leave in the morning and then reported to work to complete the remainder of his 8-hour daily tour of duty and performed two hours of unscheduled overtime work. Are the leave hours counted in determining overtime pay?

Yes, authorized leave with pay is deemed employment and does not reduce the amount of overtime pay to which an employee is entitled during an administrative workweek. Therefore, the employee is entitled to 8 hours of basic pay and 2 hours of irregular or occasional overtime pay or compensatory time off. (See 5 CFR 550.112(c).)

3. A GS employee was suspended without pay for 3 workdays. The employee is regularly scheduled to work Monday - Friday. He reported to work on Thursday, the second Thursday of the pay period, and worked 8 hours. He also performed work for 8 hours on Friday and for 12 hours on Saturday for a total of 28 hours for that week. Does the employee have an overtime pay entitlement?

The time the employee was suspended is time in a non-pay status and does not count as hours of work. An employee is entitled to be compensated for all hours worked in excess of 8 in a day or 40 in a workweek at a rate equal to one and one-half times the employee's regular rate of pay. This employee is entitled to be paid his basic rate of pay for 28 hours (8 hours each on Thursday and Friday, plus 12 hours on Saturday). He is also entitled to additional half-time for 4 hours of work in excess of the 8-hour daily overtime standard on Saturday.

4. A nonexempt GS-5 security guard is regularly scheduled to work Saturday through Wednesday, 11:00 p.m. to 7:30 a.m. (8-hour shifts), with a 30-minute meal break. Before the beginning of the administrative workweek, he was scheduled to work the same shift on Thanksgiving Day and to work on his "in lieu of" holiday which fell on Wednesday. What are his pay entitlements for the workweek?

The employee worked a total of 48 hours in the workweek. He is entitled to 40 hours of basic pay plus 8 hours of overtime pay on Thanksgiving Day. In addition, he is entitled to 8 hours of holiday premium pay for working on his "in lieu of" holiday on Wednesday, 16 hours of Sunday premium pay for working overlapping shifts on Sunday, and 39 hours of night pay. Night work is regularly scheduled work performed by an employee between 6 p.m. to 6 a.m. (11:00 p.m. - 6:00 a.m. less 30-minute meal break = 6.5 hours per shift x 6 workdays = 39 hours). Because the security guard is nonexempt, his overtime pay entitlement is computed under FLSA overtime pay formula.

5. What is the overtime standard for part-time employees? Do part-time employees earn holiday premium pay?

Overtime pay for eligible part-time employees is provided only for work over 8 hours in a day or 40 hours in a workweek. If a part-time employee is officially ordered to work 12 hours in a day, he/she is entitled to 4 hours of overtime pay. The 40-hour standard applies to an employee who works more than 40 hours in a week. If a part-time employee works during his scheduled hours on a holiday, he/she is entitled to holiday premium pay only for those scheduled hours. If the same employee was scheduled to work on a holiday but is excused from working because of the holiday, he/she would only receive pay for the hours of work regularly scheduled on that day.

6. Is a nonexempt employee entitled to overtime pay for training that caused his workweek to exceed 40 hours? The training is directly related to the employee's job.

Yes, an employee is entitled to overtime pay for hours spent in training outside of his regular working hours provided he was required by the agency to attend the training and its purpose is to improve the employee's performance in his current position. Cite: 5 CFR 551.423(a)(2) (The rules differ for exempt employees.)

7. An exempt GS-13 employee is on a first 40-hour tour of duty. The administrative workweek begins on Sunday. He works 5 hours on Sunday and 7 hours on Monday. On Monday afternoon, he is ordered to take an evening flight from San Diego to Washington to attend a Tuesday meeting. Is the time spent in travel (5 hours) considered hours of work?

According to 5 CFR 610.111(b), all work performed by an employee within the first 40 hours in a workweek is considered regularly scheduled work for premium pay and hours of duty purposes. Therefore, since all work performed by an employee within the first 40 hours is considered regularly scheduled work and 5 U.S.C. 5542(b)(2)(A) provides that an employee having a regularly scheduled workweek must be compensated for any time spent in travel on official business which is within his regularly scheduled workweek, such travel time is compensable within the first 40 hours. However, travel performed after the first 40 hours of work is not compensable unless it meets one of the conditions described in 5 U.S.C. 5542(b)(2)(B).

8. Three GS-12 exempt employees are placed "on-call" to assist with potential computer problems over the weekend. They are required to carry pagers and be available to report for duty if needed within a reasonable period of time. When called to the workplace on a nonworkday, they receive a minimum of 2 hours of callback in overtime pay or compensatory time off. However, many times they can resolve problems from their homes on their Government cell phones or laptops. Can they be paid overtime for the work performed at home?

Yes, they may be eligible for unscheduled overtime, provided that the work is of a substantial nature and the agency can verify that the work is performed. The employee, with the agreement of the supervisor, may keep records/documentation of the actual time worked. Fifteen minutes is the largest fraction of an hour used for crediting irregular or occasional overtime work is paid in 15 minutes increments. When such work is performed in other than the full fraction, 8 minutes and over are rounded up and 7 minutes and lower are rounded down to the nearest fraction of an hour. The minutes may be added together to get a total.

9. Nonexempt employees work a 40-hour basic workweek that includes overtime hours-- 8 hours each day on Monday, Tuesday, and Wednesday, 4 hours on Thursday, and 12 hours on Friday for a total of 40 hours each week. The union claims that the employees should receive 4 hours of overtime pay on Friday because they work more than 8 hours on that day. Is this correct?

The total hours in their basic workweek do not exceed 40 hours. However, the employees are entitled to 1/2 their hourly regular rate for the 4 hours of work on Friday that exceed the daily overtime standard of 8 hours in a day.

10. Can management order a GS-15/10 employee to perform overtime work even though he will receive no additional compensation due to the limitations on premium pay?

Yes, an employee may be required to perform the overtime work even though additional compensation is barred by the biweekly maximum earnings limitation established under 5 U.S.C. 5547. Under the law, GS employees and other covered employees may receive certain types of premium pay for a biweekly pay period only to the extent that the sum of basic pay and premium pay for the pay period does not exceed the greater of the biweekly rate for (1) GS-15, step 10, or (2) the rate payable for level V of the Executive Schedule. The limitation on the amount of premium pay an employee may receive is only a bar to the payment of premium pay. It does not affect basic pay nor management's right to order work

SUNDAY PREMIUM PAY

11. An employee's basic workweek is Sunday through Thursday. Is an employee entitled to Sunday premium pay for regularly scheduled Sunday work when the employee takes compensatory time off on Sunday?

No. The law prohibits the payment of Sunday premium pay to employees during any period when no work is performed, including holidays and periods of paid leave, excused absence with pay, compensatory time off, credit hours or time off as an incentive or performance award.

12. An employee is regularly scheduled to work 8 hours on Sunday and receives Sunday premium pay when he performs each hour of Sunday work. Is he entitled to 10 hours of Sunday premium pay when scheduled before the beginning of the administrative workweek to perform 2 hours of overtime work on Sunday?

No, Sunday work means nonovertime work so he is entitled to 8 hours of Sunday pay, providing he performs each of Sunday work, and 2 hours of regularly scheduled overtime pay.

13. Does an employee continue to receive Sunday premium pay while on military leave for active duty training?

No, the employee loses Sunday premium pay. No appropriated funds may be used to pay Sunday premium pay unless an employee performs regularly scheduled Sunday work.

14. If a GS-1811-13 criminal investigator works on a Sunday that is not part of his basic workweek, is he entitled to Sunday premium pay?

No, in order to receive Sunday pay, an employee must perform work during a regularly scheduled 8-hour period of service that is not overtime work. Therefore, if an employee works a 12-hour shift on

Sunday that is outside of his regularly scheduled administrative workweek, he is not entitled to Sunday premium pay. However, his time is considered unscheduled duty and is compensated by availability pay.

15. A GS employee is on a 4/10-hour day compressed schedule and is scheduled to work Sunday through Wednesday. Is he entitled to Sunday premium pay? How much?

An employee is entitled to Sunday premium pay, provided the Sunday work is part of the employee's regularly scheduled daily tour of duty, and he actually performs work during the Sunday tour of duty. For employees on compressed work schedules, the entire daily scheduled work for Sunday constitutes Sunday work. This employee would receive 10 hours of Sunday premium pay. (See the definition of Sunday work in 5 CFR 550.103.)

NIGHT PAY

16. Is a GS employee entitled to night pay differential for performing irregular, unscheduled overtime work after 6:00 p.m.?

No, nightwork is regularly scheduled work performed by an employee between the hours of 6:00 p.m. and 6:00 a.m. Unscheduled overtime or overtime not approved in advance of the administrative workweek is not considered part of the employee's regularly scheduled administrative workweek. Therefore, the employee is not entitled to the night pay differential. (See the definition of nightwork in 5 CFR 550.103.)

17. A GS employee is regularly scheduled to work Monday - Friday from 6:00 p.m. until 2:30 a.m. He plans to take a week of annual leave which includes a Federal holiday. Is he entitled to a night differential for the holiday?

Yes, the employee is entitled to a night differential for a period when he is excused from nightwork on a holiday, regardless of whether he takes paid leave during the workweek. (See 5 CFR 550.121(a).)

18. If a GS employee is on paid leave for less than 8 hours in a pay period, will the employee continue to be paid a night pay differential?

Yes, the employee continues to receive the night pay differential. However, if the paid leave is 8 hours or more, the employee loses the night pay for the days while on leave. (See 5 CFR 550.121(b).)

HOLIDAY PREMIUM PAY

19. A GS-13 employee worked 12 hours on a holiday. His normal schedule is 8:00 AM to 4:30 PM. Is he entitled to 12 hours of holiday premium pay or to compensatory time off?

The employee is entitled to 8 hours of holiday pay and 4 hours of overtime pay capped at the individual's hourly rate of basic pay if the employee was scheduled to work overtime before the beginning of the administrative workweek. Management cannot provide compensatory time off in lieu

of holiday pay, but could provide compensatory time off for the 4 hours of overtime work if the overtime work was irregular or occasional. (See 5 CFR 550.131(a) and (b).)

20. Can management designate an “in lieu of” holiday for an employee scheduled to work on a holiday?

No. The employee is entitled to holiday premium pay. (See 5 CFR 550.131(a).)

21. Is an employee entitled to holiday premium pay when scheduled for training on a holiday?

Generally, payment of premium pay for employees in training is prohibited. There are very specific exceptions that are provided for at 5 CFR 410.402. (See 5 CFR 550.113(d).)

22. Can an exempt employee who travels on a holiday (Monday) to attend training that starts on Tuesday receive holiday premium pay?

Employees generally are not entitled to holiday premium pay for the time they spend in work-related travel during holiday hours that correspond to their tours of duty. Holiday premium pay is paid only to employees who perform work on a holiday. The Comptroller General has ruled that the criteria found in 5 U.S.C. 5542(b)(2)(B) must be used to determine whether travel time is hours of work for holiday premium pay purposes. An employee may earn compensatory time off for travel only if the time spent traveling occurs outside the employee’s basic tour of duty on the holiday as the employee is being compensated for those hours on the holiday.

STANDBY DUTY

23. Two exempt GS-12 Program Analysts are on TDY assignments in South America. Their work schedules show that their hours of duty are Monday - Friday, 8:00 AM to 4:30 PM. While TDY, however, they are performing large amount of overtime work. Should they be getting annual premium pay for standby duty?

No. Annual premium pay for standby duty is intended to compensate employees who are required to stay at their duty stations for long periods of time, a substantial part of which is in a standby status. These employee are performing overtime work.

ADMINISTRATIVELY UNCONTROLLABLE OVERTIME (AUO) PAY

24. We have employees who go TDY about 6 times a year inspecting equipment. Their positions require them to travel worldwide about 21 weeks per year. During these TDYs, they work significant overtime hours. 5 CFR 550.153 says that employees must perform “a substantial amount of irregular or occasional overtime” which must average at least 3 hours a week and is a continual requirement generally averaging more than once a week. We have averaged the overtime they incurred during their TDYs for the entire year and get an average of 3 hours. Does this meet the intent of AUO?

No, AUO is paid to employees in positions in which the hours of duty cannot be controlled administratively and which require substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. The intent of AUO is to compensate irregular or occasional overtime work that is a continual, ongoing requirement. Based on the type of duties your employees performed, it does not appear that they meet the intent of AUO pay.

LAW ENFORCEMENT AVAILABILITY PAY (LEAP)

25. Is a criminal investigator who works a compressed 5-4/9 schedule entitled to one hour of overtime pay if he works three hours beyond his daily tour of duty? He receives law enforcement availability pay (LEAP).

No, the availability pay law assumes a 40-hour basic workweek consisting of five 8-hour workdays. According to the Office of Personnel Management, alternative work schedules are intended for employees who work a regular schedule, not for those employees who may be required to work large amounts of unscheduled overtime. Should it be necessary for an investigator to work three hours of unscheduled duty beyond his or her 8-hour workday, those hours are covered by availability pay. The 25-percent premium covers the first 2 hours of overtime work on a basic workday and 1 hour of unscheduled overtime work. To correct this problem, management needs to place the investigator on a 40-hour work schedule, reconstruct what he should have received, and determine if there is any indebtedness on the part of the employee or the Government.

26. Are criminal investigators who are receiving availability pay eligible for any other premium payments?

Criminal investigators who are receiving availability pay may not be paid any other premium pay based on unscheduled duty hours because these hours are compensated by LEAP. However, they are eligible to receive other types of title 5 premium pay based on hours other than unscheduled duty hours, including regularly scheduled overtime pay, night, Sunday, and holiday premium pay. (See 5 U.S.C. 5545a(c).) However, the overtime standard for regularly scheduled overtime work that is paid under 5 U.S.C. 5542(d) is different. Overtime work means actual work that is scheduled in advance of the administrative workweek in excess of 10 hours on a day containing hours that are part of an investigator's basic 40-hour workweek or on a day outside the 40-hour workweek. (See 5 CFR 550.111(f).)

27. Each criminal investigator who is receiving availability pay and the appropriate supervisor must make an annual certification that the investigator has met, and is expected to meet, the annual average of 2 or more hours of unscheduled duty per regular workday. Under what circumstances may an agency deny or cancel a certification?

5 CFR 550.184(d) identifies only two circumstances in which an agency may deny certification: (1) when an investigator has failed to perform unscheduled duty as assigned or reported; or (2) when he or she is unable to perform scheduled duty for an extended period due to physical or health reasons.

REFERENCES

- 5 CFR part 550, subpart A
- 5 CFR part 551, subparts D & E
- OPM Fact Sheet: Availability Pay
- OPM Fact Sheet: Biweekly Caps on Premium Pay
- OPM Fact Sheet: Compensatory Time Off
- OPM Fact Sheet: How to Compute FLSA Overtime Pay
- OPM Fact Sheet: Night Pay
- OPM Fact Sheet: Overtime Pay, Title 5
- OPM Fact Sheet: Premium Pay (Title 5)
- OPM Fact Sheet: Sunday Premium Pay
- DoD Instruction 1400.25, “Civilian Personnel Management,” V550, Enclosure 3, March 8, 2015
- DoD 7000.14-R, DoD Financial Management Regulation, Volume 8: “Civilian Pay Policy,” Paragraph 0303

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