Michigan Civil Service Commission

REGULATION

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11-08	January 1, 2012	Overtime, On-Call, Callback Compensation	**5.02**
Issued By: Compensation	**Rule Reference:** Rule: 5-4 (Additional Compensation: Overtime, etc.)		**Replaces:** Reg. 5.02 (SPDOC 08-06, March 23, 2008)

Authority: Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules.

Subject:
PREMIUM PAYMENT OF OVERTIME, ON-CALL COMPENSATION, AND CALLBACK COMPENSATION

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1. PURPOSE

This regulation establishes the standards for the payment of overtime, on-call compensation, and callback compensation.

2. CIVIL SERVICE COMMISSION RULE REFERENCE

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at *www.michigan.gov/mdcs*.

Rule 5-4 Additional Compensation: Overtime, etc.

5-4.1 Additional Compensation

An appointing authority may require an employee to work under special conditions. An eligible employee working under the following special conditions is paid the pay premiums provided in this rule in accordance with the regulations.

5-4.2 Overtime

(a) Eligibility. *The compensation schedules must identify each classification that is eligible for overtime pay. Overtime pay is paid to eligible employees for time in pay status, excluding sick and annual leave, in excess of 40 hours in a week or as otherwise provided in the regulations.*

(b) Rate. *The overtime rate of pay is one and one-half times the employee's regular rate of pay, as defined in the regulations. The regulations may provide for accrual of compensatory time at the premium rate instead of a cash payment.*

5-4.3 On-call

(a) Eligibility. *The compensation schedules must identify each classification that is eligible for on-call pay. On-call pay is paid to an eligible employee who is scheduled to be available to return to duty, work-ready, within a specific time.*

(b) Rate. *The on-call rate of pay is one hour of straight time pay for each 5 hours of on-call time.*

5-4.4 Callback

(a) Eligibility. *The compensation schedules must identify each classification that is eligible for callback pay. Callback pay is paid to an eligible employee who is not on scheduled on-call status but is called back to duty outside of normal working hours.*

(b) Rate. *Callback pay is paid at the overtime rate of pay. An eligible employee is paid for a minimum of 3 hours unless called back within 3 hours of the employee's regular starting time.*

3. STANDARDS

A. Eligible Employees.

1. Employees in classifications that are assigned an eligibility code of "N" are eligible for overtime. *Eligible* is represented as "non-exempt" in the Human Resources Management Network system (see the Compensation Plan for eligibility codes). When processing a preauthorized reclassification, the appointing authority must enter the assigned eligibility code for the new classification level as reported in Section A of the Compensation Plan.

2. **Overtime.**

   a. **Rate.**

      (1) The overtime rate is one and one-half times the employee's regular rate.

(2) The regular rate is defined as the employee's base rate of pay plus any applicable shift premium, special pay premium (e.g., prison rate), on-call, longevity, or other pay, except for overtime premium.

b. **Basis.**

(1) Overtime payment is made to eligible employees for time worked in excess of 40 hours in a week, except as follows:

(a) Overtime payment is made to eligible employees working in hospitals and residential care facilities for time worked in excess of 8 hours a day or 80 hours in a biweekly period.

(b) Overtime payment is made to eligible employees engaged in law enforcement activities (including security personnel in correctional institutions) for time worked in excess of 80 hours in a biweekly work period.

(2) Premium payment must not be duplicated (pyramided) for the same hours worked.

(3) Time worked is defined as all of the following:

(a) All hours actually spent in pay status, excluding sick and annual leave.

(b) Travel time required by and at the discretion of the employer before, during, or after the regularly scheduled workday.

(4) All paid leave, except for sick and annual leave, is counted as time worked for computing daily and weekly overtime. Holiday credit is counted as time worked in computing weekly overtime only. If an employee works on a holiday, premium payment for the first 8 hours worked on the holiday is due and payable only when 40 hours in a week are exceeded. In the case of employees engaged in law enforcement activities (including security personnel in correctional institutions) and employees working in hospitals and residential care facilities, premium payment is due when 80 hours in a biweekly work period are exceeded. The employee may, with the approval of the employer, take another day in the same period as the holiday.

(5) A day is defined as a 24-hour period beginning at 12:01 a.m., unless otherwise authorized by the State Personnel Director.

(6) A week is defined as a 7-day period beginning at 12:01 a.m. Sunday, unless otherwise authorized by the State Personnel Director.

(7) A biweekly work period consists of 80 hours of work, normally performed on 10 workdays within the 14 consecutive calendar days that coincide with the current pay periods. A biweekly pay period is considered complete if the actual time worked, plus any paid administrative, annual, sick, military, or holiday leave, equals

or exceeds 80 hours. The premium for overtime hours worked is not counted as work time.

c. **Control.**

(1) The appointing authority has the right to require an employee to work overtime, and to ensure that the employee does not work unauthorized overtime.

(2) The appointing authority is responsible for scheduling and authorizing overtime.

(3) The appointing authority must establish policies and procedures for scheduling and authorizing overtime.

(4) The appointing authority is responsible for pay for all overtime worked, even if overtime worked was not authorized, and the benefits of the overtime work are accepted by the appointing authority.

d. **Scheduling.**

(1) The daily or biweekly work schedule of an employee may be changed temporarily. The employee's work schedule must be posted or the employee must be notified of the next biweekly work schedule not less than 96 hours before the beginning of the biweekly work period. If the employee's work schedule is changed during a biweekly work period or within 96 hours prior to the beginning of a pay period for the following pay period, the employee is eligible for overtime payment for all hours worked outside of the employee's original work schedule for the balance of the affected pay period.

(2) To the extent that sufficient notice is available and the best interests of the state allow, and giving consideration to work assignments and organizational units in the agency, the employer must schedule overtime work as equally as practical among employees who normally perform the assigned duties.

(a) An employee who declines to work overtime is counted as having worked in determining this "equal share."

(b) If an insufficient number of employees normally performing the duties volunteer to work overtime, the overtime may be offered to other employees qualified to do the work.

(c) The appointing authority may mandate overtime when an insufficient number of employees volunteer for scheduled overtime or there is an emergency.

e. **Timekeeping.** Positive timekeeping records must be maintained at the agency for all eligible employees. Positive timekeeping is defined as recording the total number of hours worked and the total number of leave hours used on a daily and weekly basis with weekly totals.

f. **Timeliness of Payment.** The employer must make a good faith effort to make payment for overtime worked on the payday of the first pay period following the biweekly work period in which the overtime is worked.

g. **Compensatory Time.**

(1) With the approval of the employer, the employee may, upon request, accrue compensatory time at the premium rate (time-and-one-half) in lieu of payment for overtime, if agreement to accrue compensatory time is reached before the work is performed.

(2) The appointing authority may adopt a maximum accrual limit of up to 240 hours of compensatory time. In the case of an employee engaged in public safety, emergency response or seasonal activity, the appointing authority may adopt a maximum accrual of up to 480 hours.

(a) Public safety activity refers to employees employed to enforce laws and maintain peace and order, who have the power to arrest and have undergone, or are undergoing, specialized training. Security personnel in correctional institutions, by specific mention, are likewise covered.

(b) Emergency response activity refers to rescue work and ambulance services.

(c) Seasonal activity refers to work during lengthy regular recurring periods of significantly increased demand.

(3) When compensatory time is approved, the employee must be paid, by gross pay adjustment, for all premiums (e.g., shift, hazard except T-rate and G-rate) due for the overtime hours worked at a time-and-one-half rate.

(4) With the approval of the employer, the employee may, upon request, have a work schedule adjustment within the week in lieu of an accumulation of overtime. For employees working in hospitals and residential care facilities, such adjustments are not allowed.

h. **Scheduling of Compensatory Time.**

(1) Compensatory time is used at the convenience of the employee subject to supervisory approval based on criteria applicable to the use of annual leave. The employer is required to honor all requests for compensatory time off, unless to do so would be “unduly disruptive.”

(2) Compensatory time must be used before annual leave except when an employee at the maximum annual leave accumulation cap would thereby lose annual leave.

(3) If the employee has not used accrued compensatory time before the end of the fiscal year in which the time has been accrued, the employee may be paid at the base rate for the compensatory time

unused at the end of the fiscal year, or at the average base rate received during the last 3 years, whichever is higher. If the employee is not paid for the accrued compensatory time, it is carried forward into the next fiscal year.

(4) Unused compensatory time accruals of an employee who resigns, retires, is dismissed, or moves to a different appointing authority are paid at the employee's current base hourly rate, or at the average base rate received during the last 3 years, whichever is higher.

(5) Unused compensatory time accruals of an employee who is laid off are paid at the base rate, or at the average base rate received during the last 3 years, whichever is higher. This does not apply to temporary layoffs.

(6) Freezing of compensatory time accruals is not allowed.

3. **On-Call Compensation.**

a. **Rate.** Employees scheduled for on-call duty are compensated at the rate of 1 hour of straight time pay for each 5 hours of on-call duty.

b. **Basis.**

(1) "On-Call" is defined as the scheduled state of availability to return to duty, work ready, within a specified time period. General availability of employees as "backup" to working personnel in the event of an extreme emergency is not considered as on-call.

(2) An employee actually required to return to duty is compensated in accordance with the regulations on callback compensation for those hours actually worked or for which payment under the callback procedure is made (see standard A.4.).

(3) An employee is not paid on-call compensation for regularly scheduled duty hours or while on paid authorized leave.

c. **Control.**

(1) The employer has the right to require an employee to be on-call or to schedule on-call work as needed in the manner most advantageous to the employer and consistent with the requirements of state employment and the public interest.

(2) Policies and procedures for authorization and payment of on-call time must be established by the appointing authority.

d. **Scheduling.**

(1) An employee scheduled by an appointing authority for on-call duty is required to remain available through a pre-arranged means of communication.

(2) An employee in on-call duty status who is not available when contact is attempted or who is not able to report, work ready, to duty within the prescribed time period is not eligible for on-call

compensation for that date and may be subject to disciplinary action.

e. **Timekeeping.** Positive timekeeping records must be maintained at the agency for all eligible employees as defined in standard A.2.e.

f. **Method of Payment.** The employer must compensate employees for on-call time in cash.

g. **Timeliness of Payment.** The employer must make a good faith effort to pay for on-call duty on the payday of the first pay period following the biweekly work period in which the on-call duty is worked.

h. **Overtime Impact.** Compensation earned for on-call time is included as part of the regular rate for overtime premium computation (See standard A.2.a.(2)). The hours on-call, however, are not used in this computation; only the dollar amounts are used.

4. **Callback.**

a. **Rate.**

(1) Full-time employees called back to duty are paid at established overtime rates as outlined in standard A.2.

(2) Less than full-time employees are compensated at straight time rates, unless by virtue of the callback the employee works in excess of 40 hours in a week. For less than full-time employees working in hospitals and residential care facilities, compensation is at straight time rates, unless by virtue of the callback the employee works in excess of 8 hours in a day or 80 hours in a biweekly pay period.

b. **Basis.**

(1) Employees called back to duty outside of their normal working hours are guaranteed a minimum of 3 hours pay, except that employees must be compensated for the actual amount of time worked if either of the following apply:

(a) They are called back to duty within 3 hours of their regular starting time; or,

(b) The period of callback duty exceeds 3 hours.

(2) Employees on scheduled on-call status are not paid on-call compensation for callback duty hours.

c. **Control.**

(1) The employer has the right to call an employee back to duty and to schedule callback duty as necessary in the manner most advantageous to the employer and consistent with the requirements of state employment and the public interest.

(2) Policies and procedures for authorization and payment of callback duty must be established by the appointing authority.

d. **Timekeeping.** Positive timekeeping records must be maintained at the agency for all eligible employees as defined in standard A.2.e.

e. **Method of Payment.** The employer must compensate employees for callback time in accordance with standard A.2.f.

f. **Scheduling of Compensatory Time.** The scheduling and use of compensatory time must be in accordance with standard A.2.h.

g. **Timeliness of Payment.** The employer must make a good faith effort to pay for callback duty on the payday of the first pay period following the biweekly work period in which the callback duty is worked.

B. Ineligible Employees.

1. Employees in classifications that are assigned the eligibility code of "Y" are ineligible for overtime. *Ineligible* is represented as "exempt" in the Human Resources Management Network system (see the Compensation Plan for eligibility codes).

2. **Work Schedules.**

a. **Scheduling and Control.**

(1) Work schedules for ineligible employees are established by the appointing authority. Employees are normally present during the regular course of the workday. However, it is recognized that demands on their time may vary from one pay period to another. Absences without charge to leave credits may be granted for any period of time, providing the appointing authority certifies the employee has completed the equivalent of a full pay period.

(2) The appointing authority can adopt a formalized compensatory time plan for ineligible employees in lieu of the above. If a compensatory time plan is used, the following conditions must be met:

(a) Sick and annual leave used in the work period must not be counted towards the eligibility for accruing compensatory time.

(b) The employee must be paid by gross pay adjustment for all premiums (e.g., shift, hazard except "P" rate) due for the overtime worked.

(c) Positive timekeeping records must be maintained for all employees covered. Positive timekeeping is defined as recording the total number of hours worked and the total number of leave hours used on a daily and weekly basis.

(d) Compensatory time is used at the convenience of the employee subject to supervisory approval based on criteria applicable to the use of annual leave.

(e) Compensatory time must be used before annual leave, except where an employee at the maximum annual leave cap would thereby lose annual leave.

(f) Ineligible employees must not be paid for unused compensatory accruals at any time, except as provided in rule 5-4.6 [Exclusions and Exceptions].

(g) Employees in the Senior Executive Service and ECP Group 4 are not eligible to accrue compensatory time, except as provided in rule 5-4.6.

b. **Overtime.** The appointing authority must obtain prior approval from Civil Service to compensate employees for overtime hours worked.

(1) Appointing authority requests for approval to pay overtime to ineligible employees must be submitted to Civil Service.

(2) Overtime approval requests must contain the employee's name, employee identification number, classification, position code, justification for request, beginning date, and expiration date. The request must also contain the criteria for payment of overtime if other than for time worked in excess of 40 hours in a week.

(3) Appointing authorities must assign employees working an alternate work schedule to an 80 hour biweekly work period, if this minimizes overtime eligibility (e.g., an employee working 45 hours in the first week and 35 hours in the second week of the pay period.)

(4) Sick and annual leave used during the work period may not be counted towards reaching the threshold required for overtime eligibility.

(5) If approval is granted to pay overtime, the employee must be compensated at a premium rate to be determined as follows:

(a) If the employee’s hourly rate is less than the highest rate of eligible employees, the employee is paid time and one-half for overtime.

(b) If the employee’s hourly rate is greater than the highest rate of eligible employees, the employee is paid time and one-half times the highest rate of eligible employees, or straight time, whichever is greater.

NOTE: Refer to the Introduction section of the Civil Service Compensation Plan for current overtime rate information.

(c) Employees whose work assignments result in premiums being added to their base rates, (e.g., shift differential, "P" rate, etc.), must have their overtime rate adjusted by the amount of the premium in the same proportion.

3. **On-Call.** The appointing authority must obtain prior approval from Civil Service to compensate employees for on-call duty under special circumstances.
   a. Appointing authority requests for approval to pay on-call compensation to ineligible employees must be submitted to Civil Service. This request should address the following criteria:
      (1) Physical restrictions placed on the employee while on-call.
      (2) Maximum period of response time allowed.
      (3) Percentage of calls expected to be returned by the on-call employee.
      (4) Frequency of expected calls during on-call time.
      (5) Potential use of the on-call time by the employee.
      (6) Disciplinary action taken against employees who fail to answer calls.
   b. If approved, compensation is paid at the rate of 1 hour of straight time credit for each 5 hours of on-call.
   c. If compensatory time is used in lieu of payment for on-call compensation, scheduling and use of compensatory time must be in accordance with standard B.2.a.
   d. Employees called back to work while in on-call status will continue to receive on-call payment while on callback duty, unless exception has been granted to pay employees callback pay.
4. **Callback.** The appointing authority must obtain prior approval from Civil Service to compensate employees for callback duty under special circumstances.
   a. If approved, employees are compensated in the same manner as eligible employees (see standard A.4.)
   b. Computation of premiums and payment must be in accordance with the regulations for overtime compensation (see standard B.2.a.)

C. Exceptions.

Exceptions to the above standards for non-exclusively represented employees may be requested by the appointing authority. These requests should be submitted to the State Personnel Director.

CONTACT

Questions regarding this regulation should be directed to Compensation, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-335-7862 or 1-800-788-1766; or by e-mail to MCSC-Compensation@michigan.gov.