

SUPERIOR COURT OF GUAM
INTERIM ADMINISTRATIVE POLICY #AD98-01
EFFECTIVE 10/01/98

Amended April 23, 1999, further amended October 1, 2001

OVERTIME AND COMPENSATORY TIME

Background: On May 17, 1995 the Superior Court of Guam implemented its exempt and non-exempt status for employees with regards to overtime compensation and FLSA requirements. Some employees were eligible to receive 1.5 compensation and other employees were eligible to receive 1:1 or straight time compensation for any overtime work performed. In the absence of overtime payment employees would accumulate compensatory time earned at the same ratio the overtime should have been compensated. In conjunction with the new, proposed Personnel Rules & Regulations, a more comprehensive rule was developed for overtime and compensatory time. While adoption of the new rules may take effect sometime early next year, court management has found it necessary to adopt the new rule as an interim administrative policy. As an updated version of overtime guidelines adopted by the Judicial Council on May 17, 1995, more provisions have been incorporated to include maximum accrual and carry-over of any compensatory time earned. While the Executive Branch prohibits any exempt employee getting any overtime compensation, the court continues compensation for its exempt employees but at a 1 to 1 ratio or straight time.

This policy is established under the administrative authority of the Administrative Director as prescribed by Rule 2 of the Personnel Rules and Regulations. This policy shall now be identified as an Interim Administrative Policy (AD98-01) which will provide for the administrative procedures and added provisions relative to the enforcement of Rule 9.27 of the Personnel Rules & Regulations. This policy will remain in effect until the adoption of the proposed new and revised Personnel Rules and Regulations. This policy will supercede all previously issued Administrative Orders, Administrative Policy memorandums and directives on the subject of Overtime and Compensatory Time, including the Overtime/Procedural Guidelines adopted by the Judicial Council on June 29, 1995.

STATEMENT OF POLICY: It is the policy of the Superior Court to comply with the federal mandate of the Fair Labor and Standards Act (FLSA) and compensate employees for hours worked (planned or unplanned) beyond their scheduled forty (40) hour workweek. This policy however is subject to the condition that any overtime work to be performed must be approved by the employee's supervisor or higher authority prior to the commencement of overtime work to be performed. In accordance with the (FLSA), there

are provisions of the mandate which prescribe to those employees who are classified as "Exempt" and "Non-Exempt" employees. The court's Human Resources Division maintains a list of positions designated as FLSA Exempt and Non-Exempt. The Judicial Council's decision on May 17, 1995 approved continued overtime compensation of all employees, exempt or non-exempt. This rule shall establish the compensation policy for all classified employees under both categories.

Section I:

TYPES OF OVERTIME WORK: There shall be two (2) types of overtime requests when classifying overtime. They are:

1. ***Planned Overtime:*** This is when overtime plans and/or work assignments are to go beyond the normal eight (8) hours day or forty (40) hour work week. In these instances, usually the division manager has determined that there is a need for upcoming overtime assignments dependent on the mission, project or division responsibility. Plans are then prearranged and the required documentation is forwarded to the Administrative Director's Office prior to the effective date(s) of overtime.
2. ***Unplanned Overtime:*** This is when overtime assignments are immediately needed or is of an emergency nature as determined, required or instructed by division managers, judges, and Administrative Director. Emergency situations categorized for unplanned overtime are:
 - a. When an established post of duty must be covered 24 hours per day and the employee assigned to that shift is not available, i.e, shortage of manpower; or
 - b. When danger to life, health, or well-being of the public, employees, inmates or other persons could occur or where danger to property is eminent; or
 - c. Other situations where the Administrative Director determines that the responsibilities prescribed for the court cannot be accomplished unless overtime work is authorized.
 - d. Employees who work during typhoon emergency periods, defined as Typhoon Conditions I and II, as declared by the Governor of Guam. *Cross-Reference: Administrative Policy on Typhoon Compensation dated April 24, 1997.*

Section II:

OCCURRENCE OF QUALIFYING OVERTIME WORK

Qualifying overtime work occurs when an employee performs work assignments under the following conditions:

1. The employee's immediate supervisor or higher authority has instructed, directed, acknowledged, or approved any employee to perform job duties outside or beyond the employee's regular work schedule; and
2. Actual work time (on-duty) is in excess of the forty (40) hours in a single workweek. This forty hours is the employee's regular scheduled work hours; and
3. The employee had performed work outside his/her regular scheduled hours.

Section III:

NON-OVERTIME WORKWEEK AS DEFINED (LEAVE TIME COMBINED WITH OVERTIME WITHIN THE SAME WORKWEEK):

1. Whenever an employee's 40 hour workweek schedule is affected by leave time, ***non-exempt employees*** or ***exempt employees performing non-exempt work*** will not be eligible for the overtime compensation rate of 1.5 or compensatory time earn ratio of 1.5. Employees must be on actual work status and be on duty for a single workweek total of forty (40) hours before the 1.5 rate will apply to any overtime work outside the employee's work schedule. Any leave time which affects the workweek includes annual, sick, donated, bereavement, paternity/maternity, FMLA leave, leave time charged as Compensatory Time Off (CTO) and all other leave categories with the exception of holiday leave and administrative leave. This administrative leave must have been for reasons of weather or unsafe working conditions, official court business, or mandatory employee training as cleared by the Human Resources Division.
2. When the affected leave time is charged and taken within the same workweek that the employee works overtime, such leave time will change any overtime compensation of 1.5 rate back to the employee's regular rate. Thus, compensating the employee's overtime work at ***regular rate. This regular rate paid for overtime work will be in equal amount of time the employee was on leave for that single workweek.*** Examples are

provided as follows:

Example A: An employee worked straight forty (40) hours the first workweek of the pay period but took sick leave on the second week of the pay period on Tuesday for eight (8) hours. The supervisor required the employee to work overtime on Friday the second week of the pay period for four (4) hours. **RESULT:** The employee would get paid 84 hours at the regular rate. The 4 hours of overtime work would be paid at regular rate because the employee did not meet the requirement of "in excess of 40 actual work hours in a single workweek". The employee was not on duty for forty straight hours because he/she was on sick leave Tuesday. The leave time affected the workweek.

Example B: An employee took four (4) hours of annual leave on Thursday during the first work week of the pay period. The supervisor required the employee to work eight (8) hours the same week on Saturday. During the second work week of the pay period, the employee worked his regular forty (40) hours but again was required to work another eight (8) hours on Saturday. **Result:** The employee would be paid 84 hours at the regular rate and 12 hours at the overtime of 1.5. The 8 hours of overtime worked during the first week was affected by the 4 hours of annual leave the employee took on Thursday. Again, the employee did not meet the requirement of "in excess of 40 actual work hours in a single workweek".

Section IV:

UNAUTHORIZED/UNRECORDED WORK: For purposes of these rules, any of the circumstances listed below shall be considered unauthorized and shall not be subject to compensation:

1. Hours worked by an employee without the knowledge, permission or approval of his/her immediate supervisor or higher authority; or
2. Work performed at an unauthorized workstation or place.
3. **Any previous unrecorded hours submitted two pay periods or more after the work was performed.** In this event, the employee's immediate supervisor or the person who authorized the work, will be held accountable for the unrecorded hours and will be cited for non-compliance of work policies by his/her division manager. The Payroll Section, FMD will advise and return such OT forms back to the division manager for his/her disposition.

Section V:

- A. COVERAGE (NON-EXEMPT EMPLOYEES):** As used in these rules, the Human Resources Division shall maintain the Occupational Listing of all classified positions grouped as non-exempt (FLSA) positions of the Superior Court.

1. COMPENSATION FORMULA OF OVERTIME FOR NON-EXEMPT POSITIONS:

Overtime compensation for non-exempt positions shall be at the rate of 1 and ½ times the regular rate of pay for each hour or portion of the hour worked. Any fraction of an hour of overtime worked shall be converted to the nearest fifteen (15) minutes.

2. COMPENSATORY TIME EARNED (CTE) IN LIEU OF OVERTIME PAY:

In the absence of any funds for overtime compensation, the overtime performed will automatically be converted to **Compensatory Time Earned (CTE) at the rate of 1 and ½ hour for each hour or portion of the hour worked.** Any fraction of an hour worked shall be converted to the nearest fifteen (15) minutes.

- B. COVERAGE (EXEMPT EMPLOYEES):** As used in these rules, the Human Resources Division shall maintain the Occupational Listing of all positions grouped as Exempt (FLSA) positions of the Superior Court. *This list is inclusive of all full-time classified and unclassified employees.*

1. COMPENSATION FORMULA OF OVERTIME FOR EXEMPT POSITIONS:

Overtime compensation for exempt positions shall be at the rate of **one to one** for each hour or portion of the hour worked. Any fraction of an hour shall be converted to the nearest fifteen (15) minutes.

2. COMPENSATORY TIME EARNED (CTE) IN LIEU OF OVERTIME PAY:

In the absence of any funds for overtime compensation for exempt employees, the overtime work hours will automatically be converted to Compensatory Time Earned (CTE) at the rate of **1 to 1** for each hour or portion of the hour worked. Any fraction of an hour shall be converted to the nearest fifteen (15) minutes.

- 3. EXEMPT LEAVE:** Exempt employees may be granted exempt leave (administrative time off with pay) as authorized by their immediate supervisor. Such **exempt leave** may be allowed only when the employee has completed his/her assigned projects or responsibilities for that particular work day. For division internal record keeping, a leave form indicating "exempt" under other, will be required of the employee and is subject to the supervisor and division head's approval only. All of the following conditions must be met when applying exempt leave:

- a. The employee must exhaust any CTE balances prior to being eligible for the exempt leave; and
- b. Exempt leave is applicable only for absences of less than a full day's work schedule and must submit a leave form for internal division use only; and
- c. Exempt employee's supervisor/division head is responsible in ensuring that division operations are not hampered when granting exempt leave; and
- d. Employees on exempt leave status may be recalled to active work status when necessitated by duty requirements; and
- e. All court employees placed on exempt leave status shall observe high standards of conduct so that the integrity and independence of the Superior Court of Guam is preserved.

Section VI:

MAXIMUM ACCRUAL OF COMPENSATORY TIME EARNED (CTE) IN ONE FISCAL YEAR:

1. **Non-exempt employees** with the exception of Marshals and Probation Officers may accrue up to **240 hours of Compensatory Time Earned** within one fiscal year. **Non-exempt** Marshals and Probation Officers may accrue up to **480 hours of Compensatory Time Earned**.
2. **Exempt employees** cannot accrue more than **240 hours of Compensatory Time Earned** within one fiscal year. This 240 hours is inclusive of any CTE accrued at the rate of 1.5 for non-exempt work compensation.

Section VII:

CONVERSION OF COMPENSATORY TIME OFF TO CASH:

1. Whenever these caps are maximized, any hours worked beyond the cap is required to be paid in cash for the payperiod the work is performed.
2. Subject to funding availability, the Administrative Director may approve, at the request of an employee (with acceptable justification), payments for unused accrued compensatory time earned, at any time, in any combination, and which shall be paid at the regular rate earned by the employee at the

time the employee receives such payment. An employee may request for such payment if he/she is **undergoing some personal hardship** and must indicate such reasons.

3. The Administrative Director may direct, upon the availability of funds at the end of every fiscal year, payment of all or part of unused accumulated CTE balances.

Section VIII:

CTE PROVISIONS AND LIMITATIONS FOR BOTH EXEMPT OR NON EXEMPT POSITIONS:

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1. **EMPLOYEE'S OPTION OF OT/CTE:** An employee may have the option of requesting CTE for the overtime hours worked in lieu of overtime compensation. This option shall be noted on the overtime request form.
 2. **EMPLOYEE'S ACKNOWLEDGMENT:** Employees must acknowledge that CTE may be awarded in the event no funds are available for overtime compensation.
 3. **OFFICIAL RECORD OF CTE:** No supervisor or division manager is authorized to accumulate a separate record of CTE. Any and all accumulated CTE maintained and recorded by FMD's Payroll Section is deemed official recording and must be submitted within the time deadlines.
 4. **SEPARATED EMPLOYEES WITH UNUSED CTE:** Any employee who resigns, retires, terminates or separates employment service shall automatically be compensated for any unused accumulated CTE balance as certified by the FMD's Payroll Section. Compensation for unused accumulated CTE shall be at the employee's final rate of pay.
 5. **EXHAUSTING CTE:** Employees who begin to accumulate a CTE balance of half or more of the maximum accruable **is encouraged to exhaust as much CTE possible prior to charging any sick or annual leave.** The employee's immediate supervisor and the employee share the responsibility in working out a schedule to exhaust any unused or excess CTE before the end of the fiscal year. This schedule should normally be planned at the earliest possible time into the third quarter of the fiscal year.
 6. **USE OF SICK LEAVE IN LIEU OF CTO:** When sickness lasting one or more days occurs during a scheduled Compensatory Time Off (CTO), and the employee substantiates such to the satisfaction of the immediate supervisor

as approved by the division manager, the employee may request that the period be charged to his/her sick leave instead of CTO. Application for such substitution of sick leave for CTO must be made within three (3) working days upon return to duty.

Section IX:

OTHER PROVISIONS RELATIVE TO OVERTIME AND/OR COMPENSATORY TIME EARNED COMPENSATION:

1. **PRIOR APPROVAL:** All employees who work outside their regular normal scheduled work hours and/or designated holidays **must** have had prior approval from their immediate supervisor or higher authority before any overtime work can be performed.
2. **TIME RECORDING AND REPORTING DEADLINE:** All employees scheduled, instructed or required to work overtime must record his/her time in and out on the bi-weekly Daily Time and Attendance Log sheet. This form as prescribed by FMD's Payroll Section shall include the employee's signature and the immediate supervisor's signature which will attest to **all** the hours worked by the employee for the pay period inclusive of any overtime work.
3. **ON-CALL/STAND-BY TIME/TRAVEL TIME:**
 - a. **On-Call or Stand-By Time** is compensable for overtime purposes only when the employee is at his/her official work site and is awaiting further instructions of work assignments **and** the time spent on-call or stand-by is outside the employee's regular work hours, or emergency situations whereby all other employees were administratively released.
 - b. **Travel Time** is only compensable for overtime purposes when the employee has gone home after completing his/her day's work or was administratively released for emergency situations and was subsequently called back to work for an emergency situation; **OR** when an employee has been directed to undergo mandatory drug or alcohol testing and the testing is outside the employee's regular scheduled hours. Travel time of one (1) hour is allowed for these purposes. (Cross-Reference: Item 8 Below).
4. **TRAINING & OVERTIME:** All employees exempt or non-exempt shall be entitled for overtime compensation at the rate of 1.5, or in the absence of funds, be awarded Compensatory Time Earned at the rate of 1.5 for any **mandatory training** required outside the employee's regular scheduled

work hours. Mandatory training is defined as training required or directed by the employee's immediate supervisor or higher authority. Overtime requests for such training shall require clearance from the Human Resources Division. Additionally, all Marshals and Probation Officers who attend a local law enforcement training cycle will be entitled for overtime or compensatory time earned for any training conducted or performed beyond the employee's regular scheduled work hours. Such entitlement will be on the condition that this training is verified by the training official.

5. EMPLOYEE STATUS WHILE OFF-ISLAND FOR TRAINING OR ASSIGNMENT:

- a. Employees who are authorized administrative leave for off-island training are only eligible to be compensated for the administrative leave time while on "training status". This administrative leave is only applicable to the employee's regular work schedule. Any mandatory training that goes beyond the employee's regular scheduled hours may be considered qualifying overtime work subject to certification by training institute or provider.
- b. Employees who are authorized off-island assignments, i.e. escorts shall be placed on regular work status and shall be eligible for overtime compensation or compensatory time earned for any and all hours identified as escort time which exceeded the 40 hours in one workweek.
- c. For off-island escorting assignments, sleep time can be excluded from compensable hours of work. All employees are required to log escort work schedule inclusive of break and sleep time by completing an off-island escort activity log. The maximum sleep time that maybe deducted is 8 hours for duty assignments of more than a 24 (twenty-four) hour period.

6. BOARD APPOINTMENTS: All employees, exempt or non-exempt, appointed by their division managers or higher authority to serve on any official (government) related committee, i.e. grievance, ethics, investigative, awards, etc. shall be entitled for overtime compensation at the rate of 1.5, or in the absence of funds, be awarded Compensatory Time Earned at the rate of 1.5 for all hours worked outside the employee's regular scheduled work hours. Such appointment must have been in writing and clearance from the Human Resources Administrator and the Administrative Director as required on the Overtime Request Form.

7. EXEMPT EMPLOYEES PERFORMING NON-EXEMPT WORK: Exempt employees who are instructed or required to perform non - exempt work

outside his/her regular work schedule shall be eligible for 1.5 overtime rate on the conditions that:

- a. The non-exempt work exceeded 20% of the employee's work time in one single workweek. 20% is defined as more than eight (8) hours. (If the employee had less than the eight (8) hours, the employee would only be eligible for straight time compensation); and
 - b. The employee fulfilled his/her forty (40) hour work week (no leave time affected the qualifying workweek); and
 - c. The non-exempt work performed is not part of the exempt employee's primary responsibilities; and
 - d. Clearance confirming non-exempt work was authorized by the Human Resources Division on the Overtime Request Form.
8. **MANDATORY DRUG OR ALCOHOL TESTING:** Any employee (exempt or non-exempt) instructed or directed to undergo mandatory drug or alcohol testing outside his/her regular work schedule shall be compensated overtime (1.5 rate) for any time spent to undergo such test. Compensable travel time of one (1) hour is allowed for this purpose. (Cross-Reference: Item 3 Above)
9. **INTEREST ON LATE OVERTIME PAYMENT:** Any overtime not paid to an employee within fifteen (15) working days after a request for payment is submitted shall earn interest at the rate of ten percent (10%) per annum from the date due until the date paid the employee at the same time he receives his payment for overtime.
10. **MEAL BREAK:** Pursuant to Title 22 §3107(c), no employee shall work more than five (5) hours without a meal period of not less than thirty (30) minutes; except that when a work meal period may be waived by mutual consent of employer and employee. Meal period should not be considered 'on-duty' or counted as time worked, unless the nature of his work prevents an employee from being relieved of duty.

Section X:

OTHER OVERTIME/COMPENSATORY TIME ISSUES NOT COVERED BY THIS RULE:

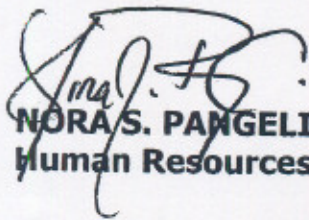
The Administrative Director shall exercise authority and discretionary judgement for administrative decisions for issues of employment that are not covered by this rule. This authority may include, but not be limited to, supplementing this rule by issuing a written administrative order or adoption of a standard operating procedure accordingly.

Section XI:

ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY

All employees, employee supervisors, official designated timekeepers, managers, Human Resources Division and the Financial Management Division share the responsibility of ensuring proper enforcement, compliance and administration of this administrative policy. Any violation, abuse, disregard or non-compliance will be subject to administrative action.

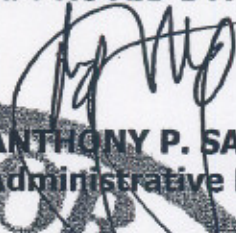
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