

# **Kansas Administrative Regulations**

## **Department of Administration**

### **Article 5.—Compensation**

#### **1-5-24. Overtime.**

(a) Except as otherwise provided by statute or these regulations, employees of the state who are eligible to receive overtime compensation under the fair labor standards act of 1938 (FLSA), as amended, shall be compensated for overtime as provided in that act. State employees in agricultural positions shall also be eligible for overtime compensation. The final determination of eligibility to receive overtime as specified in this subsection shall be made by the director for all classified employees and all unclassified employees whose pay is subject to approval by the governor under K.S.A. 75-2935b and amendments thereto.

(b)(1) The rate at which any eligible employee is to be compensated for overtime worked shall be one and a half times the employee's regular rate of pay. This rate shall not include premium pay for holidays worked or any call-in and callback compensation paid for hours not actually worked.

(2) All employees who are eligible for overtime compensation and who were paid for overtime during the 12 months preceding the receipt of a longevity bonus payment or a quality award bonus payment shall receive an additional overtime payment, which shall be calculated as follows:

(A) Divide the bonus pay by total hours worked in the preceding 12 months to obtain the increase in the regular rate; and

(B) multiply the increase in the regular rate by the number of overtime hours paid in the preceding 12 months; then, multiply that product by one-half. The result shall be the employee's additional overtime pay.

No additional overtime pay shall be due for any overtime hours worked during the preceding 12 months for which compensatory time was given under subsection (e).

(c) Each appointing authority shall be responsible for control of overtime in the agency. Overtime, to the extent possible, shall be authorized in advance by the responsible supervisor.

(d)(1) Except as provided in paragraph (d)(3), in determining whether an employee in a position or class determined to be eligible for overtime pay has worked any overtime in a given workweek or work period, only time actually worked shall be considered.

(2) The number of hours of paid leave used in an employee's workweek or work period that, when added to the number of hours actually worked in that employee's workweek or work period, exceeds the applicable overtime threshold shall be compensated in the following manner:

(A) Given as equivalent time off as specified in subsection (f); or

(B) paid at the hourly rate of pay.

(3) If all of the following conditions are met, an official state holiday may be counted as time worked for employees in positions that have been determined to be eligible for overtime compensation:

(A) The employee is asked to report to work in order to respond to a building, highway, public safety, or other emergency, as determined by the appointing authority.

(B) This work is performed outside the employee's normal work schedule for the workweek or work period that includes the official state holiday.

(C) The appointing authority authorizes inclusion of that official state holiday in calculating time worked by the employee.

The appointing authority shall report to the director the name and position number of each employee for whom the state holiday will be counted as time worked.

(e)(1)(A) In lieu of paying an eligible employee at the time-and-a-half rate for overtime worked, an appointing authority may elect to compensate an employee for overtime worked by granting compensatory time off, at the rate of one and a half hours off for each hour of overtime worked, at some time after the workweek or work period in which the overtime was worked if the conditions of paragraph (e)(1)(B) are met.

(B) Any appointing authority may elect to compensate an employee for overtime worked by granting compensatory time off only if an agreement or understanding has

been reached before the performance of the work. Except as provided in 29 C.F.R. 553.23(b), the agreement or understanding concerning compensatory time off shall be between the appointing authority and the individual employee, and a record of its existence shall be maintained for each employee. The agreement or understanding to provide compensatory time off may take the form of an express condition of employment if the employee knowingly and voluntarily agrees to it as a condition of employment and if the employee is informed that the compensatory time earned may be preserved, used, or cashed out in a manner consistent with the provisions of this regulation. The appointing authority of any agency that had a regular practice of awarding compensatory time off in lieu of overtime pay before April 15, 1986 shall be deemed to have reached an agreement or understanding with any employee who has been continuously employed by that agency in one or more positions that are eligible for overtime from a date before April 15, 1986.

(2) An eligible employee shall not accrue more than 240 hours of compensatory time for overtime hours worked. Each eligible employee who has accrued 240 hours of compensatory time off shall, for any additional overtime hours of work, be compensated with overtime pay. However, an appointing authority may establish a lower maximum accumulation for employees in that agency.

(3) If an eligible employee is paid for accrued compensatory time off, this compensation shall be paid at the regular rate earned by the employee at the time the employee receives the payment.

(4)(A) Except as provided in K.A.R. 1-9-14 (a), each eligible employee who has accrued compensatory time off authorized under this subsection shall, upon termination of employment or upon promotion, demotion, or transfer to another state agency, be paid for the unused compensatory time at a rate of compensation not less than the higher of either of the following rates:

(i) The average regular rate received by the eligible employee during the last three years of the employee's employment; or

(ii) the final regular rate received by the eligible employee.

(B) Any longevity or quality award bonus payments received during the last three years of employment shall be included in determining the average regular rate and the final regular rate specified in paragraph (e)(4)(A).

(5)(A) Each eligible employee who has accrued compensatory time off authorized under this subsection and who has requested the use of compensatory time shall be permitted by the appointing authority to use this time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the agency.

(B) Each employee who has accrued compensatory time and whose FLSA status is changed to exempt shall be granted the compensatory time off, paid for the entire amount, or provided a combination of both compensatory time off and pay, so that there is no remaining compensatory time balance before the employee's status changes to exempt.

(C) Each employee who has accrued compensatory time off under this subsection may be required by the appointing authority to use the compensatory time within a reasonable period after receiving notice of this requirement. The notice shall state the length of time in which a specified number of hours of compensatory time are to be used.

(f) When an employee who is eligible for overtime works additional time that could result in overtime hours, that employee's appointing authority may give the employee equivalent time off, on an hour-for-hour basis, in the workweek or work period in which the additional time is worked if any of the following conditions is met:

(1) The appointing authority notifies the employee of the change in the employee's normal work schedule for that workweek or work period at least five calendar days in advance of the day in which the employee's normal work schedule is first changed.

(2) The appointing authority has established a written policy stating that the employee may be required to take equivalent time off, on an hour-for-hour basis, in the workweek or work period in which additional time is worked.

(3) The employee requests or agrees to take equivalent time off during the workweek or work period in which additional time was worked, and the appointing

authority determines that this arrangement is not detrimental to the operations of the agency.

In any case, the equivalent time off shall be taken at a time agreeable to the appointing authority during the workweek or work period in which the additional time is worked.

(g) This regulation shall be effective on and after June 5, 2005.

(Authorized by K.S.A. 75-3706, K.S.A. 2004 Supp. 75-3747, K.S.A. 75-5507, and 75-5514; implementing K.S.A. 75-2938, 75-3707, 75-3746, 75-5508, K.S.A. 2004 Supp. 75-5537, and K.S.A. 75-5541; effective May 1, 1979; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-86-17, June 17, 1985; amended, T-86-36, Dec. 11, 1985; amended May 1, 1986; amended, T-87-11, May 1, 1986; amended May 1, 1987; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 27, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Sept. 1, 2000; amended June 5, 2005.)

\*\*\*\*\* Authenticated Kansas Administrative Regulation \*\*\*\*\*