

MS 625 Premium Pay and Compensatory Time

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Responsible Office: Office of Human Resources

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Attachments

Attachment A – Compensatory Time Off for Travel Worksheet

Attachment B – Compensation for On-Call Duty Status

Attachment C – Computation of Holiday Pay

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Attachment E – Computation of Overtime for Non-exempt Employees

Attachment F – Basic Requirement for Granting Compensatory Time to Non-Exempt Employees

1.0 Purpose

This Manual Section establishes Peace Corps policy for authorization and payment or other compensation for premium pay, such as: compensatory time, overtime, night differential, Sunday or holiday work performed by Peace Corps employees.

2.0 References

- (a) 5 USC 5541-5549 and 6101-6103.
- (b) Fair Labor Standards Act of 1938, as amended (FLSA), 29 USC 201 *et seq.* This statute is applicable to non-exempt employees only.
- (c) 5 CFR Parts 550 and 551.
- (d) Article 8 of the negotiated agreement (collective bargaining agreement) between the Peace Corps and the Peace Corps Employees Union, AFSCME Local 3548, AFL-CIO.
- (e) Federal Workforce Flexibility Act of 2004 (Pub. L. 108-411, October 30, 2004); 5 CFR §1401 *et seq.*

3.0 Scope

This Manual Section applies to all U.S. Direct Hire employees except the Peace Corps Director, Deputy Director, any official delegated authority to act for the Director, a member of the Senior Executive Service or Senior Foreign Service, and Foreign Service Nationals (who are subject to the overtime provisions of local compensation plans).

This manual section does not apply to Law Enforcement Availability Pay (LEAP), a form of premium pay provided to Federal law enforcement officers who are criminal investigators pursuant to the Law Enforcement Availability Pay Act of 1994, codified in 5 U.S.C. §§ 5542(d) and 5545a.

This Manual Section also does not apply to personal service contractors.

For bargaining unit employees the provisions of Article 8 (Overtime) of the negotiated agreement (collective bargaining agreement) between the Peace Corps and the Peace Corps Employees Union, AFSCME Local 3548, AFL-CIO will govern.

4.0 Definitions

The following defined terms are based on definitions in applicable statutes and regulations:

- (a) ***Administrative Workweek*** is the period of seven consecutive calendar days beginning with Sunday and ending with Saturday
- (b) ***Compensatory Time Off*** is time off granted to an employee from his or her scheduled tour of duty in lieu of payment for an equal amount of time spent in overtime work.
- (c) ***Exempt Employees*** are employees in certain supervisory, administrative, and professional positions who are not subject to the paid overtime requirement of FLSA. They may, however, be compensated for overtime as required by the provisions of Title 5 and this Manual Section.
- (d) ***Head of Office***, for the purposes of the Manual Section, is defined as a supervisory FP-1 position.
- (e) ***Holiday Work*** is non-overtime work performed by an employee during a regularly scheduled daily tour of duty on any day designated as a holiday, either in the United States by Federal statute or Executive Order or at an overseas Post by a Peace Corps Country Director in consideration of local customs.
- (f) ***Hourly Rate of Basic Pay*** is the annual rate of basic pay divided by 2,087 hours. The hourly rate of basic pay is used as the basis for determining the overtime rate for exempt employees.
- (g) ***Intermittent Employee*** is an employee who is employed on less than a full-time basis with no prescheduled tour of duty.
- (h) ***Night Pay Differential*** is additional compensation authorized for work between the hours of 6:00 p.m. and 6:00 a.m. when it is part of an employee's regularly scheduled administrative workweek.
- (i) ***Non-exempt Employees*** are those employees not specifically exempted from the provisions of the FLSA who must be compensated for all overtime work performed. Non-

exempt employees who are not in the bargaining unit are compensated for overtime under the provisions of either Title 5 or FLSA or the Federal Workforce Flexibility Act, as appropriate and whichever provides the greater benefit. (See MS 625 Attachment E – Computation of Overtime for Non-exempt Employees for examples of overtime computations under both Title 5 and FLSA.) Non-exempt employees who are in the bargaining unit are compensated under the provisions of Article 8 of the Negotiated Agreement between the Peace Corps and the Peace Corps Employees Union, AFSCME Local 3548, AFL-CIO.

- (j) **Official Duty Station** is an employee's designated Post of duty, the limits of which will be the corporate limits of the city or town in which the employee is stationed; but if not stationed in an incorporated city or town, the official duty station is the reservation, station, or established area within which the Post of duty is located.
- (k) **Official Travel** is travel officially ordered and approved, which is performed by an employee in the course of, or in connection with, the conduct of government business.
- (l) **On-Call Status** is a requirement to be available to return to duty on short notice during off-duty hours. Employee must be available by telephone, electronic beeper, or similar device and, if so ordered, return within 1 hour to the office or duty station to perform urgent work.
- (m) **Otherwise Compensable Period of Time** means periods of time that are creditable as hours of work for the purpose of determining a specific pay entitlement. For example, hours of travel are not creditable for purposes of compensatory travel time if the hours are otherwise compensable periods of time, that is, compensated by basic pay or under other premium pay provisions, even if there are compensation caps that limit the payment of premium pay for those hours.
- (n) **Overtime Work** (For the definition of Religious Overtime Work, see section 4.0(u)) is that work which is ordered in advance to be performed by an employee in excess of daily schedule in a day, 40 hours in a week, or 80 hours in a biweekly pay period and which is outside of that employee's regularly scheduled administrative workweek. Overtime includes both regular overtime work (that which is part of an employee's regularly scheduled administrative workweek) and irregular or occasional overtime work. The determination of whether the work is overtime depends in part on the alternative work schedule of the employee in question (see MS 630 *Direct Hire Hours of Duty*).
 - (1) **Maxiflex Schedule** – For employees on a maxiflex schedule, overtime is all time in excess of 8 hours in a day, or 80 hours in a pay period (or also for bargaining unit employees, 40 hours in a week), which is **officially ordered in advance** and outside of the regularly scheduled administrative workweek. Time worked **at the election of the employee** in excess of the above hours is credit time, not overtime.
 - (2) **Fixed Compressed Schedules** – For employees on a fixed compressed schedule, overtime is that time which is **officially ordered in advance** to be performed outside of the fixed schedule, specifically the following:

- (i) In excess of 10 hours in a day or 40 hours in a week for those on a fixed four-day workweek;
 - (ii) In excess of 13 hours/20 minutes in a day or 40 hours in a week for those on a fixed three-day workweek; or
 - (iii) In excess of 9 hours in a day (or 8 hours on the one scheduled 8-hour day) or 80 hours in a pay period for those on a 5-4/9 fixed pay period.
- (o) **Part-time Employee** is an employee who is employed with a regular prescheduled tour of duty from 32 to 64 hours in a biweekly pay period.
- (p) **Premium Pay** is additional pay authorized for overtime, night, holiday, and Sunday work.
- (q) **Rate of Basic Pay** is the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.
- (r) **Regularly Hourly Rate of Pay** is computed by first adding up all includable payments made for all hours of actual work performed for the week by a non-exempt employee, and then dividing this total by the total hours of actual work. The regular hourly rate of pay is used as the basis for determining the overtime rate for non-exempt employees. (See MS 625 Attachment D – Computation of Regular Rate under Fair Labor Standards Act Provisions for the types of payments included and excluded in the computation of an employee's regular hourly rate.)
- (s) **Regularly Scheduled Administrative Workweek**, for full-time and part-time employees, is the period within an administrative workweek in which an employee is regularly scheduled to work. Regularly scheduled workweeks may vary considerably based on the alternative work schedules established by the various basic work units within the Agency (see MS 630 *Direct Hire Hours of Duty*).
- (t) **Religious Compensatory Time Off** means compensatory time off, as authorized by 5 U.S.C. 5550a, under which an employee whose personal religious beliefs require the abstention from work during certain periods of time in which the employee may elect to perform overtime work in order to make up for time the employee takes off to meet those personal religious requirements.
- (u) **Religious Overtime Work** means work performed by an employee outside his or her scheduled tour of duty for the purpose of making up time lost for meeting personal religious requirements, as such term is explained in the definition of “religious compensatory time off” in this section.
- (v) **Sunday Work** is non-overtime work performed by an employee during a regularly scheduled tour of duty when any part of that daily tour of duty is on a Sunday.
- (w) **Temporary Duty Station** means any work site away from an employee's official duty station, including, e.g., Volunteer sites and recruitment events.

- (x) **Tour of Duty** refers to the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that are scheduled in advance and during which an employee is required to perform work on a regularly recurring basis.
- (y) **Travel Status** includes only official travel (not other forms of travel, including leave-related travel, funeral leave and medevac travel) and generally includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel.

5.0 Policy

5.1 General Policy

- (a) It is Peace Corps policy that employees who are directed to perform work for the Peace Corps' benefit, including official travel and attendance at conferences or training, will be compensated for that work as provided by this Manual Section. Supervisors must not authorize or permit work to be performed by non-exempt employees outside of their established work schedules or during the lunch period, unless they intend to provide payment for the overtime. In addition, it is the Peace Corps' policy that no overtime work be performed by any non-exempt employee except at the specific direction of that employee's supervisor. A non-exempt employee may not decide to perform overtime work even if such employee does not expect to be paid for it. If a manager or supervisor knows, or has reason to believe, that unauthorized overtime work is being performed by a non-exempt employee, the manager or supervisor must stop it to preclude an obligation to pay overtime.
- (b) Managers and supervisors are expected to utilize fully all employees during the basic workweek. Through observance of established work schedules and the effective planning and scheduling of work, the need for overtime work can be eliminated. However, supervisors may require employees to work overtime when necessary.
- (c) For bargaining unit employees, the provisions of Article 8 of the negotiated agreement between the Peace Corps and the Peace Corps Employees Union, AFSCME Local 3548, AFL-CIO, will govern.

5.2 Appeals from Determinations of Status of employees as exempt or non-exempt

Applying criteria prescribed in the Fair Labor Standards Act (FLSA), the Office of Human Resource Management (HRM) determines each employee's status. This determination of exempt or non-exempt status appears on the personnel action (SF-50) and Earnings and Leave Statement of each employee.

Appeals regarding determinations of exempt/non-exempt status may be processed through Peace Corps grievance procedures, either MS 655 *Direct Hire Employee Grievance Procedure* for non-bargaining unit members or the Negotiated Agreement procedure for bargaining unit members,

or may be directed to the U.S. Office of Personnel Management (OPM). Cases appealed to OPM may not subsequently be processed through the Peace Corps grievance procedures.

5.3 Overtime

5.3.1 Supervisor's Role

- (a) **Authorizing Overtime:** Overtime must be authorized and approved before being ordered. Supervisors are authorized, within Peace Corps budget limitations and other restrictions imposed by the Director, to approve requested overtime work for pay or compensatory time off for the employees under their jurisdiction. The procedures for authorizing, approving, and recording overtime are set forth in Sections 4.1 and 4.2 of the accompanying MS 625 *Premium Pay and Compensatory Time Procedures*.
- (b) **Ordering Overtime:** Before a supervisor requires an employee to work overtime, the supervisor should consider the effect of such additional work on the health and efficiency of the employee and any personal circumstances which may cause a hardship for the employee. Employees required to work overtime and must travel between home and office at a late hour or on infrequently scheduled public transportation may take taxis, at Peace Corps expense, in order to avoid unnecessary safety and health hazards. Managers and supervisors will ensure that all employees within an organizational unit be given the opportunity to participate in overtime work assignments for which they are qualified, and that all overtime is accurately recorded.

When overtime is properly ordered, after the supervisor has given due consideration to the personal circumstances of the employee and the exigencies of the Federal government which make overtime necessary, failure of an employee to report and to work during the scheduled overtime period may be a basis for disciplinary action.

When requiring a bargaining unit employee to work overtime, supervisors must follow the provisions of Article 8 of the negotiated agreement between the Peace Corps and the Peace Corps Employees Union, AFSCME Local 3548, AFL-CIO.

- (c) **Calculation of Overtime Pay:** The procedures for calculating overtime pay are set forth in Section 4.4 of the accompanying MS 625 *Premium Pay and Compensatory Time Procedures*.

5.3.2 Overtime in Offices other than Assigned Office

Overtime work may be performed for an office by an employee regularly assigned to a different office. However, the requesting official must obtain prior approval from the employee's regular supervisor. It is the responsibility of the receiving office to ensure that the sending office is reimbursed for the overtime worked.

5.3.3 Call-back Overtime

An employee who is ordered to return to his or her official duty station or place of employment for irregular or occasional overtime work is entitled to at least two hours pay at the appropriate overtime rate for each time he or she is called back to duty, even if his or her services are not required for the full two hours.

5.3.4 On-Call Status and Compensation

- (a) **On-Call Status** – There is no entitlement to premium or other extra compensation for on-call status when no work is performed. (3 FAM 3137.2) An authorizing officer (depends on the assignment) *must* request volunteers for on-call availability. Management will not impose any restraint or coercion on employees who decline to volunteer. In the absence of sufficient volunteers, the authorizing officer may assign on-call status on a rotating basis among non-bargaining unit employees with the requisite skills.
- (b) **Compensation** – Work performed during On-Call status is compensated by Overtime or Compensatory Time Off In Lieu of Overtime. Credit Hours is not an option. Compensation for non-exempt employees is covered by the Fair Labor Standards Act (FLSA). Compensation for exempt employee is covered by Title V of the United States Code. For additional information on Overtime and Compensatory Time Off in Lieu of Overtime, please refer to section 5.3 of this Manual Section and sections 4.1 - 4.5 of the accompanying MS 625 *Premium Pay and Compensatory Time Procedures*.

Also, for a quick reference guide for compensation for On-Call Duty Status, please see MS 625 Attachment B – Compensation for On-Call Duty Status.

5.3.5 Overtime while in Temporary Duty Travel Status

Official travel time will normally be scheduled within the employee's regularly scheduled administrative workweek. However, when situations require that the approving authority direct an employee to travel outside of regularly scheduled hours, overtime pay or compensatory time off may be authorized in advance.

Within the limitations of this Manual Section, the officials described in paragraph 5.3.1 above are authorized to approve overtime in travel status for employees under their jurisdictions. Overtime while on travel is not payable if it is not approved. See MS 625 *Premium Pay and Compensatory Time Procedures* for the conditions that must be met in order to be considered hours of work and thus payable.

Additional procedures and restrictions applicable to overtime for travel are set forth in Section 4.3 of the accompanying MS 625 *Premium Pay and Compensatory Time Procedures*.

5.3.6 Overtime Compensation

Work officially ordered and approved in advance and performed by a full-time, part-time, or intermittent employee in excess of 8 hours in a day or 40 hours a week and outside of that employee's regularly scheduled administrative workweek is overtime work. Overtime work shall

be compensated for, within the limitations and restrictions of this Manual Section, by either pay or compensatory time off from official duty.

The specific criteria for determining which type of compensation is appropriate—pay or compensatory time—as well as the procedures for determining the overtime pay rate for both exempt and non-exempt employees, and conditions on the use of compensatory time, are set forth in sections 4.2 through 4.4 of the accompanying MS 625 *Premium Pay and Compensatory Time Procedures*.

5.4 Non-Exempt Employee Coverage under FLSA Overseas

Non-exempt employees are not covered by the FLSA for any ***full*** administrative workweek worked overseas. Therefore, the overtime of a non-exempt employee who works an entire workweek overseas is determined under Title 5, not FLSA.

Non-exempt employees are covered by the FLSA for any ***partial*** administrative workweek worked overseas.

Any travel time that is compensable must be taken into account in determining what constitutes the workweek. Since travel from or to the U.S. on weekends during an employee's normal working hours (typically between 8:30 and 5:00) is considered compensable "hours worked" for FLSA non-exempt employees, an FLSA non-exempt employee traveling during those weekend hours would be covered by FLSA for that workweek because the entire workweek did not take place overseas.

5.5 Night Pay Differential

An employee whose regularly scheduled tour of duty or any portion thereof falls within the hours of 6:00 p.m. to 6:00 a.m. is entitled to compensation at his or her rate of basic pay plus a night pay differential amounting to 10 percent of his or her basic rate for that portion of work performed between those hours.

An employee regularly scheduled to work at night is entitled to night differential even though he or she is absent from regularly scheduled night work due to a holiday or while in authorized travel status.

Payment of night differential is authorized for a period of paid leave only when the total amount of that leave in a pay period—including both day and night hours—is less than eight hours. If the total amount of leave is eight hours or more, night differential cannot be paid for any paid leave hours during the pay period.

5.6 Holiday Pay

An employee who is assigned to work on a Sunday or legal holiday falling within his or her regular tour of duty is entitled to holiday pay paid at the rate set out in the MS 625 *Premium Pay and Compensatory Time Procedures*.

6.0 Compensatory Time Off for Travel

An employee will receive compensatory time off for time spent by the employee in an official travel status away from the employee's official duty station when such time is not otherwise compensable for pay under another statute. This policy does not apply to any other travel, including leave-related travel, funeral leave, or medevac travel. This is a separate category of compensatory time. It is reported, accrued, and used independently of "regular" compensatory time.

6.1 Supervisor Approval Required

The Peace Corps encourages eligible employees to make use of the Time-Off-for-Travel (TOT) benefit. However, employees do not have a right to use all accrued TOT time except to the extent such use is approved by their supervisors. Requests for TOT leave shall be approved or authorized only if such leave does not interfere with the effectiveness of the Peace Corps.

6.2 Amount Earned

There is no limitation on the amount of compensatory TOT an employee may earn. However, use of earned compensatory time off in lieu of accrued annual leave in excess of the employee's annual leave ceiling does not constitute an exigency of the public business, and management may not approve restoration of excess annual leave forfeited at the end of the leave year.

6.3 No Payment for Unused Compensatory Time Off for Travel (TOT)

Current laws prohibit payment for unused compensatory time off for travel under any circumstances.

The procedures for requesting and granting compensatory time off for travel are set forth in Section 4.6 of the accompanying MS 625 *Premium Pay and Compensatory Time Procedures*.

7.0 Compensatory Time Off for Religious Observances

An employee may receive compensatory time off for religious observances by rearranging their scheduled hours of work when a religious absence from work is in accordance with their personal religious beliefs and requirements.

Employees may earn religious compensatory time off hours by performing Religious Overtime Work which may be used solely to cover a religious absence approved by the Peace Corps. Religious Overtime Work performed shall not generate an entitlement to premium pay or other pay. Prior to an agency determination to approve or reject an employee request for religious compensatory time off, an employee must provide in writing to the Peace Corps the information as follows:

- (a) the name and/or description of the religious observance;
- (b) dates and times of absence; and

- (c) dates and times that the employee plans to earn hours for religious compensatory time off.

7.1 Separation from Federal Service or Transfer to another Federal Agency

Upon separation from Federal service or transfer to another Federal agency, the Peace Corps will compensate employees for any positive balance of hours of religious compensatory time-off earned, but not yet used. Employees shall be compensated at their hourly rate of basic pay in effect at the time the religious compensatory time off was earned. Religious compensatory time off cannot be forfeited, paid as overtime premium pay, provided as compensatory time off in lieu of overtime pay, or converted to any other form of time off.

(For additional information on religious compensatory time off, please refer to MS 625 *Premium Pay and Compensatory Time Procedures*.)

8.0 Procedures

Procedures implementing this Manual Section are set forth in the MS 625 *Premium Pay and Compensatory Time Procedures*. The Human Resource Council is authorized to approve the Procedures and any revisions to the Procedures. (See MS 601 *Administration of the Peace Corps Personnel System* at 3.2.)

9.0 Effective Date

The effective date of this Manual Section is the date of issuance.