



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY TRAINING CENTER AND FORT JACKSON
2400 JACKSON BOULEVARD
FORT JACKSON, SC 29207

ATZJ-CG

25 JUL 2018

MEMORANDUM FOR

Commanders, All Units Reporting Directly to This Headquarters
Commanders, Fort Jackson Partners in Excellence
Directors and Chiefs, Staff Offices, This Headquarters

SUBJECT: Fort Jackson Policy Memorandum #10 - Fair Labor Standards Act (FLSA)

1. References:

a. Fair Labor Standards Act, U.S. Department of Labor, Wage and Hour Division, WH Publication 1318, May 2011.

b. TRADOC Policy Letter 12, Fair Labor Standards Act (FLSA), 20 June 2014.

c. Negotiated Agreement, Local 1909, American Federation of Government Employees (AFGE), 30 June 1987.

d. Collective Bargaining Agreement, National Federation of Federal Employees (NFFE), 03 March 2014.

2. Purpose. To express my commitment in ensuring that Fort Jackson leaders are aware of, and in compliance with, FLSA civilian overtime entitlements.

3. Policy:

a. As leaders, you must ensure subordinate managers and supervisors are aware of all regulations, policies, and guidelines governing the supervision of civilian employees to include overtime provisions. Employees must be compensated for hours worked in excess of their scheduled hours of work for all tasks which management approves or "suffers or permits" to be performed. "Suffered or permitted" is work the employee performed that was neither ordered nor approved in advance by management that management was aware the employee was performing and failed to act in a reasonable time to stop the employee from performing the work.

b. Duties and responsibilities identified in assigned position descriptions (PD) determine whether the employee is covered by FLSA. Determination regarding employee status, exempt or non-exempt, is made by the Civilian Personnel Advisory

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Center (CPAC) based on the duties and responsibilities reflected in the employee's PD. It is imperative that management ensures that PDs accurately reflect assigned duties and responsibilities and clearly define the amount of discretion and independent judgment required for decision making. Keep in mind that discretion and independent judgment also applies to work actually performed and not just work described. Changes to major duties should immediately be officially captured by submitting an updated PD to the CPAC.

c. Employees covered by the FLSA are considered "non-exempt" from the FLSA. They are granted overtime when they perform work in excess of their scheduled tour of duty. Employees not covered by the FLSA, are considered "exempt". Overtime compensation for exempt employees is governed by Title 5, United States Code (USC), based on basic rates of pay. Exempt employees are granted overtime when work is officially ordered and approved (in writing by authorized personnel) in excess of their scheduled tour of duty.

(1) Non-exempt employees:

(a) Are paid overtime at a rate equal to one and a half times the employee's hourly regular rate of pay.

(b) Must be compensated for all hours of work they perform that is "suffered and permitted" to occur by management.

(c) Must be paid overtime unless they request compensatory time in lieu of overtime payment.

(2) Exempt employees:

(a) Whose basic pay does not exceed GS-10, step one, the overtime hourly rate of pay is generally equal to one and one-half times the hourly rate of basic pay of the employee. Compensatory time may be granted at the request of the employee.

(b) Whose basic pay exceeds GS-10, step one, the overtime hourly rate of pay is generally equal to the greater of one and one-half times the GS-10, step one, hourly rate or the hourly rate of basic pay for the employee. Compensatory time may be required by management in lieu of overtime for overtime work performed.

4. Enclosed guidance from 5 CFR 551.206 is provided to assist you in reaching "discretion and independent judgment" decisions when developing or updating civilian PDs. Your servicing CPAC is also available to help supervisor and their subordinate supervisors in understanding and applying FLSA provisions.

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5. This policy memorandum is effective until superseded or rescinded.

Encl



MILFORD H. BEAGLE, JR.
Brigadier General, U.S. Army
Commanding

§ 551.206 Administrative exemption criteria.

An *administrative employee* is an employee whose primary duty is the performance of office or non-manual work directly related to the management or general business operations, as distinguished from production functions, of the employer or the employer's customers and whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(a) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.

(b) The phrase *discretion and independent judgment* must be applied in light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to, whether the employee:

- (1)** Has authority to formulate, affect, interpret, or implement management policies or operating practices;
- (2)** Carries out major assignments in conducting the operations of the organization;
- (3)** Performs work that affects the organization's operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the organization;
- (4)** Has authority to commit the employer in matters that have significant financial impact;
- (5)** Has authority to waive or deviate from established policies and procedures without prior approval;
- (6)** Has authority to negotiate and bind the organization on significant matters;
- (7)** Provides consultation or expert advice to management;
- (8)** Is involved in planning long- or short-term organizational objectives;
- (9)** Investigates and resolves matters of significance on behalf of management; and
- (10)** Represents the organization in handling complaints, arbitrating disputes, or resolving grievances.

(c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, an employee can exercise discretion and independent judgment even if the employee's decisions or recommendations are reviewed at a higher level. Thus, the term *discretion and independent judgment* does not require that decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of

action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.

(d) An organization's workload may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee does not involve the exercise of discretion and independent judgment with respect to matters of significance.

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures, or specific standards described in manuals or other sources.

(f) The use of manuals, guidelines, or other established procedures containing or relating to highly technical, scientific, legal, financial, or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption. Such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exemption status. However, employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances will be nonexempt.

(g) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though serious consequences may flow from the employee's neglect. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

(h) Employees in certain occupations typically assist and support line managers and assume facets of the overall management function. Neither the location of the work nor the number of employees performing the same or similar work turns such work into a production function. For example, independent agencies or agency components often provide centralized human resources, information systems, procurement and acquisition, or financial management services as support services to other agencies or agency components. However, this does not change the inherent administrative nature of the work performed to line or production work. Similarly, employees who develop, interpret, and oversee agency or Governmentwide policy are performing management support functions. Some of these activities may be performed by employees who would otherwise qualify under another exemption. Depending upon the purpose of the work and the organizational context, work in certain occupations may be either exempt or nonexempt. For example, criminal investigators who perform work directly related to the internal management of the agency and typically would be expected to provide recommendations of great significance based on the analysis of investigative findings would likely be considered as performing a staff function. In contrast, the performance

of investigative and inspectional work to confirm whether specific regulatory requirements have been met for an investigative/inspectional component of any agency would likely be considered as performing a line rather than a staff function.

(i) An employee who leads a team of other employees assigned to complete major projects (such as acquisitions; negotiating real estate transactions or collective bargaining agreements; designing and implementing productivity improvements; oversight, compliance, or program reviews; investigations) generally meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team. An example is a lead auditor who oversees an audit team in an auditing agency and who is assigned responsibility for leading a major audit requiring the use of substantial agency resources. This auditor is responsible for proposing the parameters of the audit and developing a plan of action and milestones to accomplish the audit. Included in the plan are the methodologies to be used, the staff and other resources required to conduct the audit, proposed staff member assignments, etc. When conducting the audit, the lead auditor makes on-site decisions and/or proposes major changes to managers on matters of significance in accomplishing the audit, including deviations from established policies and practices of the agency.

(j) An executive assistant or administrative assistant to a high level manager or senior executive generally meets the duties requirements for the administrative exemption if such employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.

(k) Human resources employees who formulate, interpret or implement human resources management policies generally meet the duties requirements for the administrative exemption. In addition, when interviewing and screening functions are performed by the human resources employee who makes the hiring decision or makes recommendations for hiring from a pool of qualified applicants, such duties constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(l) Management analysts who study the operations of an organization and propose changes in the organization, program analysts who study program operations and propose changes to the program, and other management advisors generally meet the duties requirements for the administrative exemption.

(m) Acquisition employees with authority to bind the organization to significant purchases generally meet the duties requirements for the administrative exemption even if they must consult with higher management officials when making a commitment.

(n) Ordinary inspection work generally does not meet the duties requirements for the administrative exemption. Inspectors normally perform specialized work along standardized lines involving well-established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They have some leeway in the performance of their work but only within closely prescribed limits.

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