HRDG 4550 - Premium Pay - Section H

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Subchapter 4550
Premium Pay
Section H - Overtime Under the Fair Labor Standards Act (FLSA)

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Coverage

All GS, FLSA-nonexempt employees, and all prevailing rate, FLSA- nonexempt employees are considered covered.

FLSA-exempt employees are not.

What Does "Hours of Work" Mean for Me as an FLSA Employee?

Hours of work is all time spent by you, an FLSA-nonexempt employee, performing an activity for the benefit of the agency and under the direction and control of the agency. Hours of work include all time deemed employment under Title 5 as well as hours of work under FLSA.

Hours of work consist of:

- Time during which you are required to be on duty,
- Time during which you are suffered or permitted to work,
- Waiting or idle time under the control and for the benefit of the agency,
- Time in an approved, paid absence status,
- Time spent in travel status, training, or attending a meeting, conference, or lecture for the benefit of and under the control of the agency, and
- Call back overtime. (You are credited with at least 2 hours of work for irregular or occasional overtime work performed on a day for which work was not scheduled for you, or when you are required to return to the place of employment.)

Suffered and permitted work is a term that refers to work which you, as an FLSA-nonexempt employee, perform that is not ordered and approved, and your supervisor knows or has reason to know that you are performing the work but does nothing to prevent it. Suffered or permitted work does not apply to FLSA-nonexempt employees under the agency's flexible work schedules.

Suffered and permitted work only counts toward overtime over 40 hours in an administrative workweek.

What is "Suffered or Permitted" Work?

Example: As an FLSA-nonexempt employee (not working a flexible work schedule) you work a tour of duty from 8 a.m. to 4:30 p.m., with a 30-minute meal period from noon to 12:30 p.m. You do not leave the office for a meal break but continue to work, although you eat a meal while working. Your supervisor observes you performing the work and does nothing to stop it. You must be compensated for the 30-minute meal break which your supervisor suffered and permitted you to work.

Note: This example could never apply to an employee under a flexible work schedule, because the concept of suffered and permitted work does not apply to this type of tour of duty.

At What Rate of Pay Do I Earn Overtime?

As an FLSA-nonexempt employee, your rate of overtime pay is not limited by the GS-10, step 1 rule. You will be paid time and a half for all overtime work performed based on your actual hourly rate of pay.

How is Overtime Computed Under the FLSA?

The following flowchart can be used to determine overtime hours under FLSA. It is important to remember that overtime hours applied toward the daily overtime standard may not be used in computing overtime hours toward the weekly standard.

Computation of Overtime Hours under FLSA Flow Chart

Computation of Overtime Hours under FLSA Flow Chart

Are you an FLSA-nonexempt employee?
If YES, go to Step 1
If NO, you are not entitled to overtime pay under FLSA. For the applicable overtime rules, see **Section J.**

1	Add all hours of work in excess of 8 per day. Note: • Disregard hours of work that are suffered and permitted, and travel to a controllable event during corresponding hours on a nonworkday. • Include all periods of approved, paid absences. • See **Section C** for employees under flexible, first-40-hour tours, or compressed work schedules.
2	Add all hours of work, not already included above. Note: Include paid absences.
3	Subtract the weekly overtime standard of 40 hours from the result of Step 2. Note: If the result is a negative number, set it to 0.
4	Add the result of Step 1 to the result of Step 3. This is the total number of hours of overtime work under FLSA for the work period.

Time spent traveling is "hours of work" if you are required to do any of the following:

- Travel during regular working hours (including regular overtime hours).
- Drive a vehicle or perform other work while traveling.

  Work while traveling generally means work which can only be performed while traveling, such as escorting prisoners to a distant prison.
- You may be compensated for work performed while traveling which is normally performed at your place of business (i.e., reviewing documents or working on a computer) only if such work is ordered and approved by your supervisor. You are compensated only for time spent actually working.
- Travel as a passenger on a one-day assignment away from the official duty station.
- Travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to your regular working hours.
- Travel incident to travel that involves the performance of work while traveling.

When Can I Earn Overtime for Travel?

  In this situation you will either be traveling to a destination to board a means of transportation upon which you will be performing work while traveling or, having performed work while traveling, returning to your official duty station. Entitlement under this condition is limited to the situation where the work performed while traveling is work which can only be performed while traveling.
- Travel under such arduous conditions that the travel is inseparable from work.

  Arduous conditions are conditions which impose substantial burden on you as the traveler beyond that normally associated with travel, such as travel over unusually adverse terrain, during severe weather conditions, or to remote facilities that are barely accessible by foot, horseback, or truck.
- Absent unusual conditions, travel by automobile over hard-

Situations When Travel Time is Never Compensable

Time in travel status is never compensable for:

- Bona fide meal breaks,
- Excess waiting time, or
- Time when your are completely relieved from duty.

Example: You are the driver of an automobile and you terminate travel at 6 p.m. to obtain lodging for the night. You resume travel at 8 a.m. the next morning. The period between 6 p.m. and 8 a.m. is not counted as hours worked.

The “2-day” per diem rule defines when you can delay your travel in order to travel during regular working hours. The rule states that such delays are allowed when they result in less than 2 days of per diem. Such delays are not considered unreasonable. If you have such a delay, you are not entitled to overtime pay. (See 53 Comptroller General [CG] 882 [1974] and 56 CG 847 [1977].

This rule applies to both delays in departure and return.

You also will **not** receive overtime compensation if your supervisor orders or you elect to travel outside of regularly scheduled hours in order to comply with the 2-day per diem rule.

You may only be paid overtime for:

- Events which are considered administratively uncontrollable (means events not controlled by the executive branch where an immediate official necessity for travel exists); or
- Travel that occurs on nonworkdays during hours which correspond to your regular tour of duty.

What is the “Two-day” Per Diem Rule?

Example: Your tour of duty is 8 a.m. to 4:30 p.m., Monday through Friday. You are sent to a controllable assignment at a temporary duty station. You complete the assignment on Friday at 4:30 p.m.

Determination: You must return to your official duty station outside of regularly scheduled working hours to comply with the 2-day per diem rule. Because the event requiring the travel is controllable, you are entitled to compensation for any official travel on Saturday or Sunday that occurs between 8 a.m. and 4:30 p.m. This time is compensable as overtime only if such work is in excess of 40 hours for the week; otherwise, the time is compensable at the base rate.

If a delay requires 2 or more days of per diem, authorized travel outside regular hours is compensable at overtime rates if the event causing the travel is uncontrollable.

Supervisors Responsibilities	Supervisors are responsible for: • Scheduling travel within an employee's regularly scheduled administrative workweek, whenever practicable; • Promptly informing an employee when ordered travel is not compensable (if requested, provide reasons requiring non-compensable travel in writing); and • Recording the reasons for requiring non-compensable travel on your employee s T&A report (or the written notification to the employee may be attached to the T&A report).

If you are permitted to use one mode of transportation, but you choose to use an alternative mode of transportation, or you travel at a time other than that selected by your supervisor, you are credited with the lesser of:

- The actual travel time which is hours of work, or
- The estimated travel time which would have been considered hours of work had you used the mode of transportation offered by your supervisor, or traveled at the time selected by your supervisor.

This typically applies to travel occurring during normal duty hours e.g., maxiflex hours between 6 am and 6 pm, Monday through Friday.

Employee-Selected Mode or Time of Travel

Example: Your tour of duty is Monday through Friday, 8 a.m. to 4:30 p.m. You are required to travel from Washington, D.C., to Atlanta, Georgia. For personal reasons, you choose to drive, rather than fly, as directed by your supervisor. The actual time you spend driving is 10 hours. The estimated time that would have been spent flying (including normal waiting time and travel time from the airport to the job site) is 4 hours. You are credited with 4 hours of work under FLSA for the time spent traveling by car from Washington, D.C., to Atlanta.

If you depart for Atlanta at 8 a.m., then you are charged with 4 hours of appropriate leave.

If you work until noon, and then depart for Atlanta, no leave is charged.

Travel Between Time Zones

When travel involves two or more time zones, the time zone from which you began your travel for the day is used to determine whether you traveled during regular hours on a workday, or during corresponding hours on a non- workday.

Home-to-work travel generally is not compensable as hours of work under FLSA. See the following Home-to-Work Travel Chart on the following page.

Home-To-Work Travel

If you are required to travel to a job site outside the official duty station, you are compensated for travel time in excess of your normal home-to-work commute.

Example: Your normal commute to work by car is 15 minutes. You are required to report directly to a temporary duty station (TDY) outside the official duty station. The time spent traveling to the TDY is 1 hour and 30 minutes. You are credited with 1 hour and 15 minutes of work under FLSA.

	If you:	and:	and:	Is the travel time “hours of work” under FLSA?
Home-To-WorkTravel Chart	Travel from home to work or from work to home	the travel occurs before/after regular working hours or corresponding hours	you are engaged in normal home to work travel	No
		drive a Government-owned vehicle home, as a requirement of MRP	you must drive other employees from home to job sites	Yes 1/
		drive a vehicle, as a requirement of MRP, to transport other employees or equipment (other than personal equipment) to a job site	--------	Yes 2/
	Report at a designated meeting place	do not receive instructions, perform other work, or pick up and carry tools (not including incidental tools)	you are transported, as a passenger, by GOV, to job site	No
		receive instructions, perform other work, or pick up and carry tools (not including incidental tools)		Yes 2/
		travel to job site within the limits of the official duty station	---------	No
			the distance	

Travel from Temporary Lodgings

The time spent by you commuting while at a temporary duty station from temporary lodgings (hotel, motel, etc.) to a temporary duty location, or to a job site within the limits of the temporary duty station, is considered home-to-work travel and is not considered working time under FLSA unless it meets one of the specific conditions in the Home-to-Work Travel Chart.

Example:You travel from your temporary lodgings to a temporary duty site, both of which are located within the same temporary duty station. The time spent traveling is not hours of work under FLSA.

When, for personal reasons, you commute from home (or from temporary lodgings other than those specified by the agency at the temporary duty station) to the temporary duty station, the daily home-to-work travel is not hours of work under FLSA.

When Not Using Temporary Lodgings

In some cases, travel time in excess of normal home-to-work travel to the temporary duty station on the first day of the temporary assignment, and from the temporary duty station to your home on the last day of the temporary duty assignment, is considered hours worked under FLSA. Such travel must meet the rules for compensable travel time listed in Travel Outside the Official Duty Station chart in **Section I**.

	If you travel within the official duty station or within a temporary duty station **during regular** working hours, or corresponding hours on nonwork days, then your time spent traveling is considered hours of work.
Travel Within the Official Duty Station	Travel within the official duty station, or within a temporary duty station, is hours of work **outside** regular working hours if the travel is continuous with, and serves to extend, your regular tour of duty, and you travel from: • The normal duty location to job site, • Job site to job site, or • Job site to the normal duty location.
Determining the Official Duty Station Limits	To determine the limits of your official duty station (your local commuting area) see MRP Directive 2301.1, MRP Supplements to the Agriculture Travel Regulation,dated 7-23-98.

If you are a nonexempt employee (covered by FLSA) . . .	And . . .	Then . . .
Traveling on a temporary duty assignment (TDY) to any foreign country or any exempt territory under the jurisdiction of the U.S.	You will be working in that area or other exempt area for the full 40 hour work week (not including travel time),	Your FLSA status changes from being nonexempt (covered by FLSA) to exempt (not covered by FLSA). Premium pay calculations are based on Title V rules, e.g., Sections F and J of this subchapter.

Foreign Exemption

Note: The foreign exemption does not apply to the areas listed below; FLSA rules apply:

- A State of the United States;
- The District of Columbia;
- Puerto Rico;
- The U.S. Virgin Islands;
- Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (67 Stat.462);
- American Samoa;
- Guam;
- Commonwealth of the Northern Mariana Islands;
- Midway Atoll;
- Wake Island;
- Johnston Island; and
- Palmyra

Chart Illustrating Premium Pay/CTOT Eligibility for Time Spent Traveling (208.3 KB)

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