

Chapter Pers 5

COMPENSATION PROVISIONS

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Pers 5.035 Performance and equity pay adjustments. Performance and equity pay adjustments recommended by the director to the joint committee on employment relations pursuant to s. 16.086 (3), Stats., shall be awarded in accordance with s. 16.086 (5) and (7), Stats.

Note: Chapter 196, laws of 1977 provided the secretary, department of employment relations, rather than the administrator, division of personnel with the authority to promulgate rules on performance and equity pay adjustments. Despite this revision of statutory authority, Pers 5.035 shall remain in effect until the secretary acts to repeal this rule.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77.

Pers 5.04 Supplementary compensation. (1) **DEFINITION.** Supplementary compensation, established in the compensation plan under s. 16.086 (1) (c), Stats., shall not be considered part of an employee's base pay. Supplementary compensation shall apply as provided in the compensation plan and shall be discontinued by the appointing authority when no longer applicable. Such supplementary compensation shall be separately recorded by the director and by the employing agency.

(2) **NIGHT DIFFERENTIAL COMPENSATION.** (a) **Definition.** Extra compensation for regularly scheduled shift hours worked of not less than 2 hours duration between 6 p.m. and 6 a.m. by employes in permanent and seasonal positions (as defined in ch. Pers 8), and limited term employes (as defined in chs. Pers 8 and 10), whose employment regularly equals or exceeds one-half time on a daily, weekly or monthly basis.

(b) **Rate for night differential.** 1. Night differential compensation shall be at the rate specified in s. 16.086 (1) (c) 2., Stats.

2. Subject to 3., night differential work that is compensable shall be on an hour-for-hour basis for each regularly scheduled hour worked between 6 p.m. and 6 a.m. as authorized and certified by the appointing authority.

3. No employe shall be eligible for such extra compensation unless he or she has worked for a period of 2 or more qualifying hours on a regularly scheduled shift basis between 6 p.m. and 6 a.m.

4. Night differential payment shall be considered separately from an employe's base pay rate and such payment shall be separately recorded on the payroll.

5. Night differential compensation shall not be paid to an employe absent on leave with pay (vacation, sick leave, military leave, etc.) during the period in which the employe would otherwise be regularly scheduled to work between 6 p.m. and 6 a.m.

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6. Night differential compensation shall not be authorized for irregularly scheduled hours of work.

7. Any night differential compensation shall cease to be payable without the right of appeal whenever the employe's regularly scheduled hours of work on a shift between 6 p.m. and 6 a.m. are reduced to under 2 hours.

8. For purposes of this section the following interpretation shall apply:

a. Regularly scheduled hours shall mean work hours repetitively occurring on a standard, split or rotated shift basis.

b. Irregularly scheduled hours shall mean work hours not scheduled on a permanent and repetitive basis.

c. Fractional hours. In computing total shift hours worked each day between 6 p.m. and 6 a.m. any remaining fractional work period of 30 or more minutes shall be rounded off to the next highest full hour. Fractional periods of less than 30 minutes shall not be compensable.

d. Substitution. Night differential compensation shall be paid to an employe who is temporarily assigned to fill a position that requires regularly scheduled work hours between 6 p.m. and 6 a.m. provided that substitute employe works for 2 or more hours within the prescribed time period.

(3) MEALS WHILE ON DUTY. As provided under s. 16.086 (1) (c) 3., Stats., when a state agency provides meals to employes who are required as a condition of employment to take such meals in the performance of employer assigned duties or responsibilities, said meals shall be provided without charge to the employe. All of the following conditions must be met for an employe to be eligible for such meals:

(a) An employe works a straight 8-hour shift without an unpaid lunch period.

(b) Meals eaten while on duty must be taken at the employe's assigned work post.

(c) Meals are presently delivered to the assigned work post or would have been if so requested and facilities are in operation at the time the meal is to be consumed.

Note: Chapter 196, laws of 1977 provided the secretary, department of employment relations, rather than the administrator, division of personnel with the authority to promulgate rules on supplementary compensation. Despite this revision of statutory authority, Pers 5.04 shall remain in effect until the secretary acts to repeal this rule.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (2) (a), Register, September, 1975, No. 237, eff. 10-1-75.

Pers 5.06 Overtime. (1) DEFINITIONS. (a) Overtime hours—time that an employe (except for law enforcement personnel, security personnel at correctional institutions and fire protection personnel) works in excess of 40 hours per workweek.

(am) Overtime hours for nonexempt law enforcement personnel, security personnel at correctional institutions, and fire protection personnel—time worked in excess of 120 hours per biweekly payroll period or 240 hours in any 28-day period. (The hours covering this provision will

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be reduced to 116 hours on January 1, 1976, and 108 hours on January 1, 1977.)

(b) **Workweek**—A regularly recurring period of 168 hours in the form of 7 consecutive 24-hour periods.

(c) **Regular rate.** The hourly rate determined by dividing the total pay (including night differential, responsibility, specialty and on-call pay) earned in the workweek by the total hours worked in the workweek.

(d) **Premium rate.** Compensation at a rate of one and one-half times the regular rate paid the employe for the workweek in which the overtime is worked.

(2) **GENERAL POLICY ON OVERTIME.** (a) Overtime work is to be held to a minimum consistent with the needs of the service, and it is the responsibility of each agency to explore all possible alternatives before a decision is made to work employes on an overtime basis.

(b) All overtime work must be authorized by the appointing authority.

(c) Additional pay for overtime work shall not be considered as a part of an employe's base pay.

(d) All cash overtime payments shall be separately recorded on the payroll.

(e) Any additional cash compensation shall cease to be payable without the right of appeal whenever the employe's scheduled hours of work are reduced to 40 hours per week.

(f) The state is considered as one employer for the purposes of determining the number of hours worked.

(g) Employes shall be categorized as "exempt" or "nonexempt" from the requirements of premium pay for overtime according to the standards established by the director.

(3) **PROVISIONS FOR NONEXEMPT EMPLOYES.** (a) Nonexempt employes shall be paid at a premium rate for all overtime hours worked.

(b) Time off at a premium rate may be granted to nonexempt employes in lieu of a premium rate cash payment for overtime hours worked. However, such time off must be granted within the same pay period in which it is earned.

(c) To compute the pay for nonexempt employes, determine the regular rate and multiply by the total number of non-overtime hours worked in the workweek; then determine the premium rate and multiply by the number of overtime hours worked in the workweek. Total pay for the workweek shall equal the sum of the two.

(4) **PROVISIONS FOR EXEMPT EMPLOYES.** (a) The pay rates for exempt employes are generally intended to compensate for the total responsibility assigned the position.

(b) Compensation in cash or time off at up to a straight time basis for work hours assigned beyond those normally required in par. (a) above may be granted at the discretion of the appointing authority.

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(c) Time off which has been credited for additional assigned work, authorized under par. (b) above shall be used as soon as possible. Normally, credited time off which is not used by the end of the calendar year in which it is credited should be paid in cash at the rate credited. With the approval of the director, the appointing authority may carry over into the next calendar year any time off which could not be granted due to the needs of the service. All such time off carried over from the previous calendar year shall be used within the first 6 months of the ensuing calendar year or paid in cash at the rate credited.

Note: Chapter 196, laws of 1977 provided the secretary, department of employment relations, rather than the administrator, division of personnel with the authority to promulgate rules on compensation for hours of work in addition to the standard basis of employment, i.e., overtime. Despite this revision of statutory authority, Pers 5.06 shall remain in effect until the secretary acts to repeal this rule.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. (1) (d), renum. (1) (b) and (c) to be (1) (c) and (d) and am., cr. (1) (b), r. (2) (c) and (g), renum. (2) (d), (e) and (f) to be (2) (c), (d) and (e), (2) (h) and (i) to be (2) (f) and (g), r. and recr. (3) and (4) (b) and cr. (1) (am) and (4) (c), am. (1) (a), (2) (a) and (b) and (4), Register, September, 1975, No. 237, eff. 10-1-75.

Pers 5.07 Additional employment. (1) **DEFINITION.** Additional employment is work of a temporary nature performed by an employe outside of his or her permanent, seasonal, sessional or limited term position.

(2) **POLICY ON ADDITIONAL EMPLOYMENT.** (a) **Nonexempt employes** shall be paid a premium rate for additional employment work hours which together with the hours worked in their regular position under (1) result in overtime hours in a workweek according to Pers 5.06 (1) (a) and (am).

(b) **Exempt employes** will normally be paid the straight time rate for the additional employment work. However, if the additional employment work is of nonexempt nature and is of sufficient duration to void the exempt status of all work in the workweek, the employe shall be paid at the premium rate for all overtime hours worked in the workweek according to s. Pers 6.05 [5.06] (1) (a) and (am).

(c) The agency employing a person on an additional employment basis shall be responsible for: determining the total hours worked by the employe; determining the employe's regular rate; and paying the premium rate where applicable.

(d) Additional employment is subject to the maximum work duration set forth in s. Pers 8.06.

(3) **PROCESSING.** (a) Additional employment is limited term employment and shall be processed subject to this section and the provisions of ch. Pers 10.

(b) All requests for additional employment shall be subject to approval by the director prior to an employe working such additional employment.

Note: Chapter 196, laws of 1977 provided the secretary, department of employment relations, rather than the administrator, division of personnel with the authority to promulgate rules on compensation for hours of work in addition to the standard basis of employment, e.g., additional employment. Despite this revision of statutory authority, Pers 5.07 shall remain in effect until the secretary acts to repeal this rule.

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History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, September, 1975, No. 237, eff. 10-1-75.

Pers 5.08 Joint employment. (1) DEFINITION. Joint employment is employment of a person in more than one permanent position by more than one agency during the same workweek.

(2) POLICY. When an employe works on joint employment the hiring agencies shall coordinate with each other the total number of hours worked by the employe in any workweek. If any premium pay is required, the costs of such additional pay shall be shared on the basis of time worked for each department or on some other basis agreeable to the agencies involved.

Note: Chapter 196, laws of 1977 provided the secretary, department of employment relations, rather than the administrator, division of personnel with the authority to promulgate rules on compensation for hours of work in addition to the standard basis of employment, which in this case would be joint employment. Despite this revision of statutory authority, Pers 5.08 shall remain in effect until the secretary acts to repeal this rule.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

Pers 5.14 Maintenance provisions. Except as provided in Pers 5.04 (3), where full or part maintenance such as laundry or meals is furnished for the employe or the employe and his family, the employe shall be charged for the value of the allowance as established by the director based upon recommendations made by the employing agencies prior to implementation. Any exception to this policy shall require the approval of the director. The director shall review these rates as required.

Note: Chapter 196, laws of 1977 provided that the compensation plan contain the maintenance provisions. This would be a responsibility of the secretary, department of employment relations, in developing the compensation plan proposal, rather than the administrator, division of personnel in administering the approved plan, and any rules on such maintenance provisions would be the secretary's, rather than the administrator's. Despite this revision of statutory authority, Pers 5.14 shall remain in effect until the secretary acts to repeal this rule.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, December, 1976, No. 252, eff. 1-1-77.