

June 23, 1993
ILR 93-K

Senator Wilford R. Black
State Capitol Building
Salt Lake City, Utah 84114

Subject: UDOT Overtime Policy

Dear Senator Black:

At your request, we examined the overtime policy for the Utah Department of Transportation (UDOT). We found the policy to be consistent with the state overtime policy established by the Department of Human Resource Management (DHRM), and in compliance with the Fair Labor Standards Act (FLSA).

UDOT Policy Is In Compliance

The overtime policy for the Department of Transportation was recently revised and a new policy was adopted in April 1993 by the Transportation Commission. We reviewed the new policy with analysts from DHRM and it appears to be in compliance with the Fair Labor Standards Act and consistent with the state overtime policies established by DHRM.

In November 1991, the state DHRM issued an "Interpretive Bulletin on Overtime Compensation and Hours Worked Under the Fair Labor Standards Act". Wherein it was stated, "It is the policy of the State of Utah to adopt the Fair Labor Standards Act as amended." In other words, the state policy follows the provisions of the FLSA which are basically that a work week is 40 hours, and employees will be compensated for hours of work in excess of 40 at the rate of one and a half times the regular rate of pay. If an employee works less than 40 hours in one week he/she is not entitled to overtime compensation even though the week may include a holiday on which work is not performed. States have the option to include or exclude annual leave or sick leave in this ruling. The law also says that work weeks may not be averaged. The interpretive bulletin says it is mandatory for all overtime worked to be pre-authorized by management, and each

department is mandated to develop its own procedures to control the use of overtime and ensure efficiency and economy. It says the agencies own policies must include processes to ensure management's authorization and approval of all overtime worked, record-keeping systems, and compensation within existing budgets for overtime worked. In addition, the bulletin says leave and holiday time taken within a work week or work period does not count towards hours worked.

In addition to the federal laws, DHRM has established some general policies for state employees governing the work schedule and pertaining to overtime, leave and related matters. Each agency when setting forth their own written policies, must assure that they are consistent with DHRM rules. The state overtime policy says "FLSA non-exempt employees shall be eligible for overtime when they actually work in excess of 40 hours per week. The single 40-hour work week is the standard for the state and does not allow averaging hours over two or more weeks (except for certain types of law enforcement, fire protection, and correctional employees.)" Non-exempt means that the employee is eligible for overtime at the compensation rate of one and a half times the rate of pay for each hour of overtime worked.

In the past, UDOT employees were allowed to accumulate overtime based on time paid (including leave and holiday time) rather than time worked. This was in direct conflict with the state overtime policy. The new revised policy at UDOT says the normal work week will consist of a minimum of 40 hours a week and a normal work day would generally be 8 hours, although it may be 9 or 10 hours if the employee is on an alternative work schedule. It says non-exempt employees will only be compensated for overtime hours after they have accumulated in excess of 40 hours of work in the work week, and averaging hours over two or more weeks is not allowed. For example, if a non-exempt employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the overtime hours worked beyond the 40 hours the second week.

The policy also says specifically that "any leave and holiday time taken within a work week shall not count towards hours worked. If extra work occurs during a week where an employee has paid leave time, those hours worked will be credited to an 'in excess' account until the individual accumulates 40 working hours in a work week." According to a DHRM bulletin, excess hours is "a new and separate category of compensable hours associated with the state's new Time and Attendance System (TAS). Excess hours accrue when an employee's hours actually worked, plus additional hours paid, but not worked (excluding sick leave), exceed an employee's normal work period. Accrued excess hours may be used by an employee in the same manner as compensatory time, but at straight time only, or may be paid out under the following three options: 1) automatically paid off in the same pay period

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accrued, 2) all hours accrued after 40 hours are paid off, 3) all hours accrued after 80 hours are paid off. Holiday hours in the new Time and Attendance System do not accrue in a separate category as before. Instead, they accrue in the new excess hours category."

The following is a typical example of how excess hours would accrue. "An employee with a 40 hour work week during which annual, holiday, or other paid leave is used, has the following schedule:

Monday	8	Annual/Holiday Leave/Other Paid Leave (except sick leave)
Tuesday	8	Hours worked
Wednesday	8	Hours worked
Thursday	8	Hours worked
Friday	10	Hours worked
<u>TOTAL</u>	<u>42</u>	Hours for the work week

The Time and Attendance System will calculate:

32	Hours worked
8	Annual/Holiday Leave/Other Paid Leave
2	Excess Hours Earned

The UDOT overtime policy was revised as a result of the new Time and Attendance System used by the state. This system won't allow employees to average hours worked over two or more time periods, and overtime can't be accumulated based on 40 hours of time paid. We feel that the new UDOT overtime policy is now in complete compliance with the state overtime policy and the Fair Labor Standards Act.

We hope this letter provides you with some helpful information. We realize this survey was done quickly and not in great depth. If there are any questions or you need additional information, please let us know.

Sincerely,

Wayne L. Welsh
Auditor General

WLW:PAH/lm