

1 **PUBLIC SAFETY EMPLOYEE OVERTIME AMENDMENTS**

2 2024 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karianne Lisonbee**

5 Senate Sponsor: _____



7 **LONG TITLE**

8 **General Description:**

9 This bill addresses overtime pay for certain state employees.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ modifies provisions relating to the number of hours that a state employee engaged
- 14 in law enforcement or fire protection activities must work to qualify for overtime
- 15 pay; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides a special effective date.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **63A-17-502**, as last amended by Laws of Utah 2022, Chapter 447



25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section **63A-17-502** is amended to read:

27 **63A-17-502. Overtime policies for state employees.**



28 (1) As used in this section:

29 (a) "Accrued overtime hours" means:

30 (i) for a nonexempt [~~employees~~] employee, overtime hours earned during a fiscal year
31 that, at the end of the fiscal year, have not been paid and have not been taken as time off by the
32 nonexempt state employee who accrued them; and

33 (ii) for an exempt [~~employees~~] employee, overtime hours earned during an overtime
34 year.

35 (b) "Appointed official" means:

36 (i) each department executive director and deputy director, each division director, and
37 each member of a board or commission; and

38 (ii) any other person employed by a department who is appointed by, or whose
39 appointment is required by law to be approved by, the governor and who:

40 (A) is paid a salary by the state; and

41 (B) who exercises managerial, policy-making, or advisory responsibility.

42 (c) "Conversion ratio" means the quotient of the total number of hours in a work period
43 divided by the work period's total number of consecutive days.

44 [~~(e)~~] (d) "Department" means the Department of Government Operations, the
45 Department of Corrections, the Department of Financial Institutions, the Department of
46 Alcoholic Beverage Services, the Insurance Department, the Public Service Commission, the
47 Labor Commission, the Department of Agriculture and Food, the Department of Human
48 Services, the Department of Natural Resources, the Department of Transportation, the
49 Department of Commerce, the Department of Workforce Services, the State Tax Commission,
50 the Department of Cultural and Community Engagement, the Department of Health, the
51 National Guard, the Department of Environmental Quality, the Department of Public Safety,
52 the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the
53 Office of the Attorney General, merit employees in the Office of the State Treasurer, merit
54 employees in the Office of the State Auditor, Department of Veterans and Military Affairs, and
55 the Board of Pardons and Parole.

56 [~~(d)~~] (e) "Elected official" means any person who is an employee of the state because
57 the person was elected by the registered voters of Utah to a position in state government.

58 [~~(e)~~] (f) "Exempt employee" means a state employee who is exempt as defined by the

59 ~~[Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq]~~ FLSA.

60 ~~[(f)]~~ (g) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et
61 seq.

62 ~~[(g)]~~ (h) "FLSA agreement" means the agreement authorized by the ~~[Fair Labor~~
63 ~~Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.,]~~ FLSA by which a nonexempt employee
64 elects the form of compensation the nonexempt employee will receive for overtime.

65 ~~[(h)]~~ (i) "Nonexempt employee" means a state employee who is nonexempt as defined
66 by the division applying FLSA requirements.

67 ~~[(i)]~~ (j) "Overtime" means actual time worked in excess of ~~[the]~~ an employee's defined
68 work period.

69 ~~[(j)]~~ (k) "Overtime year" means the year determined by a department under Subsection
70 ~~[(4)(b)]~~ (5)(b) at the end of which an exempt employee's accrued overtime lapses.

71 (l) "Public safety employee" means a state employee who:

72 (i) in accordance with 29 C.F.R. 553.211 and 553.212:

73 (A) is a uniformed or plain clothes law enforcement officer or correctional officer;

74 (B) is empowered by statute to enforce laws designed to maintain public peace and
75 order, to protect life and property from accidental or willful injury, and to prevent and detect
76 crimes;

77 (C) has the power to arrest;

78 (D) possesses a certificate issued by the Peace Officer Standards and Training Division
79 created under Section [53-6-103](#) stating that the employee has successfully met the standards
80 and training requirements established for peace officers under Title 53, Chapter 6, Part 2, Peace
81 Officer Training and Certification Act; and

82 (E) performs 80% or more law enforcement or correctional officer duties in a work
83 period; or

84 (ii) in accordance with Sec. 203(y) of the FLSA:

85 (A) is a firefighter, paramedic, emergency medical technician, rescue worker,
86 ambulance personnel, or hazardous materials worker;

87 (B) is trained in fire suppression;

88 (C) has the legal authority and responsibility to engage in fire suppression; and

89 (D) is engaged in the prevention, control, and extinguishment of a fire or the response

90 to an emergency situation where life, property, or the environment is at risk.

91 ~~[(k)]~~ (m) "State employee" means every person employed by a department who is not:

92 (i) an appointed official;

93 (ii) an elected official; or

94 (iii) a member of a board or commission who is paid only for per diem or travel
95 expenses.

96 ~~[(h)]~~ (n) "Uniform annual date" means the date when an exempt employee's accrued
97 overtime lapses.

98 ~~[(m)]~~ (o) "Work period" means~~[-]~~ the maximum number of hours, within a specified
99 number of consecutive days, a state employee may work before accruing overtime.

100 (2) The work period for a state employee is:

101 ~~[(i)]~~ (a) for ~~[aH]~~ a nonexempt [employees] employee, except [law enforcement and
102 hospital employees, a consecutive seven day 24 hour work period of 40 hours] a public safety
103 employee or a hospital employee, 40 hours in seven consecutive days;

104 ~~[(ii)]~~ (b) for ~~[aH]~~ an exempt [employees, a 14 day, 80 hour payroll cycle; and]
105 employee, 80 hours in 14 consecutive days;

106 ~~[(iii)]~~ (c) for a nonexempt ~~[law enforcement and hospital employees]~~ hospital
107 employee, the period established by each department by rule [for those employees] according
108 to the requirements of the [Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.]
109 FLSA; or

110 (d) for a nonexempt public safety employee, the period established by each department
111 under Subsection (3).

112 (3) The division shall require each department employing a public safety employee to
113 designate one of the following work periods applicable to that employee:

114 (a) for a public safety employee described in Subsection (1)(1)(i):

115 (i) 80 hours in 14 consecutive days; or

116 (ii) 160 hours in 28 consecutive days; or

117 (b) for a public safety employee described in Subsection (1)(1)(ii):

118 (i) 100.5 hours in 14 consecutive days;

119 (ii) 201 hours in 28 consecutive days; or

120 (iii) another work period that:

121 (A) is not less than seven nor more than 28 consecutive days;

122 (B) does not have a conversion ratio greater than the conversion ratio of the work
 123 period described in Subsection (3)(b)(i) or (ii);

124 (C) conforms to the state's payroll cycle; and

125 (D) is approved by the director of the division.

126 ~~[(2)]~~ (4) Each department shall compensate each state employee who works overtime
 127 by complying with the requirements of this section.

128 ~~[(3)]~~ (5) (a) Each department shall negotiate and obtain a signed FLSA agreement from
 129 each nonexempt employee.

130 (b) In the FLSA agreement, the nonexempt employee shall elect either to be
 131 compensated for overtime by:

132 (i) taking time off work at the rate of one and one-half hour off for each overtime hour
 133 worked; or

134 (ii) being paid for the overtime worked at the rate of one and one-half times the rate per
 135 hour that the state employee receives for nonovertime work.

136 (c) ~~[Any]~~ A nonexempt employee who elects to take time off under this Subsection
 137 ~~[(3)]~~ (5) shall be paid for any overtime worked in excess of the cap established by the division.

138 (d) Before working any overtime, ~~[each]~~ a nonexempt employee shall obtain
 139 authorization to work overtime from the employee's immediate supervisor.

140 (e) Each department shall:

141 (i) for ~~[employees who elect]~~ an employee who elects to be compensated with time off
 142 for overtime, allow overtime earned during a fiscal year to be accumulated; and

143 (ii) for ~~[employees who elect]~~ an employee who elects to be paid for overtime worked,
 144 pay them for overtime worked in the paycheck for the pay period in which the employee
 145 worked the overtime.

146 (f) If a department pays a nonexempt employee for overtime, that department shall
 147 charge that payment to that department's budget.

148 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued
 149 overtime hours for nonexempt employees and charge that total against the appropriate fund or
 150 subfund.

151 ~~[(4)]~~ (6) (a) (i) Except as provided in Subsection ~~[(4)(a)(ii)]~~ (6)(a)(ii), each department

152 shall compensate ~~[exempt employees who work]~~ each exempt employee who works overtime
153 by granting ~~[them]~~ the employee time off at the rate of one hour off for each hour of overtime
154 worked.

155 (ii) The director of the division may grant limited exceptions to this requirement,
156 where work circumstances dictate, by authorizing a department to pay ~~[employees]~~ an
157 employee for overtime worked at the rate per hour that the employee receives for nonovertime
158 work, if that department has funds available.

159 (b) (i) Each department shall:

160 (A) establish in its written human resource policies a uniform annual date for each
161 division that is at the end of any pay period; and

162 (B) communicate the uniform annual date to its employees.

163 (ii) If any department fails to establish a uniform annual date as required by this
164 Subsection ~~[(4)]~~ (6), the director of the division, in conjunction with the director of the
165 Division of Finance, shall establish the date for that department.

166 (c) ~~[(i) Any overtime earned under this Subsection (4) is not an entitlement, is not a~~
167 ~~benefit, and is not a vested right.]~~ The overtime authorized for an exempt employee under this
168 Subsection (6) is not an entitlement, a benefit, or a vested right.

169 ~~[(ii) A court may not construe the overtime for exempt employees authorized by this~~
170 ~~Subsection (4) as an entitlement, a benefit, or as a vested right.]~~

171 (d) At the end of the overtime year, upon transfer to another department at any time,
172 and upon termination, retirement, or other situations where the employee will not return to
173 work before the end of the overtime year:

174 (i) any of an exempt employee's overtime that is more than the maximum established
175 by division rule lapses; and

176 (ii) unless authorized by the director of the division under Subsection ~~[(4)(a)(ii)]~~
177 (6)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by
178 paying the employee for the overtime or by granting the employee time off for the lapsed
179 overtime.

180 (e) Before working any overtime, each exempt employee shall obtain authorization to
181 work overtime from the exempt employee's immediate supervisor.

182 (f) If a department pays an exempt employee for overtime under authorization from the

183 director of the division, that department shall charge that payment to that department's budget
184 in the pay period earned.

185 ~~[(5)]~~ (7) The division shall:

186 (a) ensure that the provisions of the FLSA and this section are implemented throughout
187 state government;

188 (b) determine, for each state employee, whether ~~[that]~~ the employee is exempt,
189 nonexempt, ~~[law enforcement]~~ a public safety employee, or has some other status under the
190 FLSA;

191 (c) in coordination with modifications to the systems operated by the Division of
192 Finance, make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
193 Rulemaking Act:

194 (i) establishing procedures for recording overtime worked that comply with FLSA
195 requirements;

196 (ii) establishing requirements governing overtime worked while traveling and
197 procedures for recording that overtime that comply with FLSA requirements;

198 (iii) establishing requirements governing overtime worked if the employee is "on call"
199 and procedures for recording that overtime that comply with FLSA requirements;

200 (iv) establishing requirements governing overtime worked while an employee is being
201 trained and procedures for recording that overtime that comply with FLSA requirements;

202 (v) subject to the FLSA and Subsections (2) and (3), establishing the maximum
203 number of hours that a nonexempt employee may accrue before a department is required to pay
204 the employee for the overtime worked;

205 (vi) subject to the FLSA, establishing the maximum number of overtime hours for an
206 exempt employee that do not lapse; and

207 (vii) establishing procedures for adjudicating appeals of ~~[any FLSA determinations]~~ an
208 FLSA determination made by the division as required by this section;

209 (d) monitor departments for compliance with the FLSA; and

210 (e) recommend to the Legislature and the governor any statutory changes necessary
211 because of federal government action.

212 ~~[(6)]~~ (8) (a) In coordination with the procedures for recording overtime worked
213 established in rule by the division, the Division of Finance shall modify its payroll and human

214 resource systems to accommodate those procedures.

215 (b) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,
216 Administrative Procedures Act, Section [63A-17-602](#), and Section [67-19a-301](#), [~~any~~] an
217 employee who is aggrieved by the FLSA designation made by the division as required by this
218 section may appeal that determination to the director of the division by following the
219 procedures and requirements established in division rule.

220 (c) Upon receipt of an appeal under this section, the director shall notify the executive
221 director of the employee's department that the appeal has been filed.

222 (d) If the employee is aggrieved by the decision of the director, the employee shall
223 appeal that determination to the Department of Labor, Wage and Hour Division, according to
224 the procedures and requirements of federal law.

225 Section 2. **Effective date.**

226 This bill takes effect on July 1, 2024.