

**Representative Karianne Lisonbee** proposes the following substitute bill:

**LAW ENFORCEMENT EMPLOYEE OVERTIME AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karianne Lisonbee**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses overtime pay for certain state employees.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ subject to certain exceptions, modifies provisions relating to the number of hours that a state employee engaged in law enforcement activities must work to qualify for overtime pay; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

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

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

54 (d) "Elected official" means any person who is an employee of the state because the  
55 person was elected by the registered voters of Utah to a position in state government.

56 (e) "Exempt employee" means a state employee who is exempt as defined by the [Fair

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

58 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

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

62 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by  
63 the division applying FLSA requirements.

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

66 (j) "Overtime year" means the year determined by a department under Subsection  
67 [~~(4)(b)~~] (6)(b) at the end of which an exempt employee's accrued overtime lapses.

68 (k) "State employee" means every person employed by a department who is not:

69 (i) an appointed official;

70 (ii) an elected official; or

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

73 (l) "Uniform annual date" means the date when an exempt employee's accrued  
74 overtime lapses.

75 [~~(m) "Work period" means:]~~

76 [~~(i) for all nonexempt employees, except law enforcement and hospital employees, a~~  
77 ~~consecutive seven day 24 hour work period of 40 hours;]~~

78 [~~(ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and]~~

79 [~~(iii) for nonexempt law enforcement and hospital employees, the period established by~~  
80 ~~each department by rule for those employees according to the requirements of the Fair Labor~~  
81 ~~Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.]~~

82 (m) "Work period" means the maximum number of hours, within a specified number  
83 of consecutive days, a state employee may work before accruing overtime.

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

85 (a) for a nonexempt employee, except a nonexempt law enforcement or hospital  
86 employee, 40 hours in seven consecutive days;

87 (b) for an exempt employee, 80 hours in 14 consecutive days;

88 (c) for a nonexempt hospital employee, the period established by each department by  
89 rule according to the requirements of the FLSA; or

90 (d) for a nonexempt law enforcement employee:

91 (i) who is employed by the Department of Natural Resources, the period established by  
92 the Department of Natural Resources by rule according to the requirements of the FLSA; or

93 (ii) who is employed by a department other than the Department of Natural Resources,  
94 the period established by that department in accordance with Subsection (3).

95 (3) Except for the Department of Natural Resources, the division shall require each  
96 department employing a nonexempt law enforcement employee to designate one of the  
97 following work periods applicable to that employee:

98 (a) 80 hours in 14 consecutive days; or

99 (b) 160 hours in 28 consecutive days.

100 [~~(2)~~] (4) Each department shall compensate each state employee who works overtime  
101 by complying with the requirements of this section.

102 [~~(3)~~] (5) (a) Each department shall negotiate and obtain a signed FLSA agreement from  
103 each nonexempt employee.

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

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

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

110 (c) [~~Any~~] A nonexempt employee who elects to take time off under this Subsection  
111 [~~(3)~~] (5) shall be paid for any overtime worked in excess of the cap established by the division.

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

114 (e) Each department shall:

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

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

119 worked the overtime.

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

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

125 [~~(4)~~] (6) (a) (i) Except as provided in Subsection [~~(4)(a)(ii)~~] (6)(a)(ii), each department  
126 shall compensate [~~exempt employees who work~~] each exempt employee who works overtime  
127 by granting [~~them~~] the employee time off at the rate of one hour off for each hour of overtime  
128 worked.

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

133 (b) (i) Each department shall:

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

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

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

140 [~~(c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a~~  
141 ~~benefit, and is not a vested right.]~~

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

144 [~~(d)~~] (c) The overtime authorized for an exempt employee under this Subsection (6) is  
145 not an entitlement, a benefit, or a vested right.

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

149 (i) any of an exempt employee's overtime that is more than the maximum established

150 by division rule lapses; and

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

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

157 (f) If a department pays an exempt employee for overtime under authorization from the  
158 director of the division, that department shall charge that payment to that department's budget  
159 in the pay period earned.

160 [~~(5)~~] (7) The division shall:

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

163 (b) determine, for each state employee, whether [~~that~~] the employee is exempt,  
164 nonexempt, law enforcement, or has some other status under the FLSA;

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

168 (i) establishing procedures for recording overtime worked that comply with FLSA  
169 requirements;

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

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

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

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

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

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

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

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

186 [~~(6)~~] (8) (a) In coordination with the procedures for recording overtime worked  
187 established in rule by the division, the Division of Finance shall modify its payroll and human  
188 resource systems to accommodate those procedures.

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

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

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

199 Section 2. **Effective date.**

200 This bill takes effect on July 1, 2024.