

Material Transmitted:

Department of Health and Human Services (HHS) Instruction 550-1, Premium Pay, dated January 26, 2009.

Material Superseded:

This Instruction supersedes HHS Instruction 550-1, Premium Pay, issued June 12, 1996.

Background:

The following revisions were made:

1. A “General Definitions” section was added for clarity and to give greater context to the reader.
2. A “Responsibilities” section was added for greater accountability.
3. The Overtime and Compensatory time sections were extensively revised to reflect regulatory changes.
4. “Law Enforcement Availability Pay” and “Documentation and Accountability” sections were added to reflect regulatory changes and to document specific actions.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

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SUBJECT: PREMIUM PAY

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550-1-00 PURPOSE

The purpose of this policy is to state Departmental policies and provide guidance concerning premium pay. Premium pay supplements base pay for work performed as stipulated in this policy.

550-1-10 REFERENCES

- A. 5 USC, Chapter 55, Subchapter IV (Premium Pay)
- B. 5 USC, Chapter 61, Subchapter II (Flexible and Compressed Work Schedules)
- C. 5 CFR, Part 550 [Pay Administration (General) Subpart A – Premium Pay]
- D. 5 CFR, Part 550 [Pay Administration (General) Subpart I – Pay for Duty Involving Physical Hardship or Hazard]
- E. 5 CFR, Part 551 (Pay Administration under the Fair Labor Standards Act)
- F. 5 CFR, Part 610 (Hours of Duty)
- G. HHS Guide to Timekeeping
- H. HHS collective bargaining agreements

550-1-20 COVERAGE AND EXCLUSIONS

A. Coverage

This policy covers those persons defined as employees under 5 USC, Section 5541(2) including General Schedule (GS) employees.

B. Exclusions

This policy does not apply to the following employees:

1. GS employees compensated by Title 38;
2. Firefighters entitled to Fire Fighters Premium Pay;
3. Federal Wage System employees;
4. Senior Executive Service;
5. Student Stipend employees;

Note: Policies governing compensatory time for religious observances and compensatory time off for travel are excluded from this Instruction.

550-1-30 GENERAL DEFINITIONS

- A. Administrative workweek. Any period of seven consecutive days (most typically Sunday through Saturday) designated in advance by the head of the OPDIV.
- B. Administratively uncontrollable work. See Section 550-1-70.A.
- C. Biweekly Pay Limitation. A cap on basic and premium pay during a pay period limiting pay to the greater of the biweekly rate payable for (1) GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) the rate payable for level V of the Executive Schedule; whichever is greater.
- D. Call-Back Overtime. See Section 550-1-50.C.
- E. Compensatory Time Off. See Section 550-1-50.B.
- F. Criminal Investigator. A Criminal Investigator is a law enforcement officer whose position is properly classified under either the GS-1811 or the GS-1812 series in the General Schedule classification system.
- G. Duty involving physical hardship. Duty that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices. Physical hardship duties may involve exposure to extreme

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- temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation.
- H. Hazardous duty. Duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist.
 - I. Hazard pay differential. See Section 550-1-90.A.
 - J. Holiday Premium Pay. See Section 550-1-80.B.
 - K. Irregular or occasional overtime work. Overtime work that is not part of an employee's regularly scheduled administrative workweek.
 - L. Law Enforcement Availability Pay. See Section 550-1-100.A.
 - M. Night Pay Differential. See Section 550-1-80.A.
 - N. Overtime. See Section 550-1-50.A.
 - O. Physical hardship. Duty that may not in itself be hazardous, but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes, dust, or noise that causes nausea, skin, eye, ear, or nose irritation.
 - P. Premium Pay. The dollar value of earned hours of compensatory time off and additional pay authorized by the relevant statute and regulation for overtime, night, Sunday or holiday work; or for standby duty, administratively uncontrollable overtime work, or availability duty. This excludes overtime pay paid to Fair Labor Standards Act (FLSA) non-exempt employees and compensatory time off earned in lieu of such overtime pay.
 - Q. Preshift and Postshift Activity. See Section 550-1-50.D.
 - R. Regular overtime work. Overtime work that is part of an employee's regularly scheduled administrative workweek.
 - S. Regularly scheduled administrative workweek. The period within an administrative workweek during which the employee (including full-time and part-time) is regularly scheduled to work.
 - T. Regularly scheduled standby duty pay. See Section 550-1-60.A.
 - U. Regularly scheduled work. Work that is scheduled *in advance* of an administrative workweek for purposes of establishing workweeks. The 40 hour work schedule and flexible or compressed work schedules are typical pre-scheduled work tours of duty. All work performed by an employee within the pre-scheduled work tour of duty is considered regularly scheduled work for premium pay and hours of duty purposes.
 - V. Sunday Premium Pay. See Section 550-1-80.C.

- W. Tour of Duty. The hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.
- X. Unscheduled Duty Hours. For the purposes of availability pay, unscheduled duty hours are those hours, during which a criminal investigator performs work, or is determined by the employing agency to be available for work, that are not:
 - 1. Part of the 40 hour basic workweek of the investigator, or
 - 2. Regularly scheduled compensated overtime hours that were scheduled in advance of the investigator's administrative workweek.

550-1-40 RESPONSIBILITIES

- A. Office of Human Resources (OHR), Assistant Secretary for Administration and Management (ASAM), is responsible for:
 - 1. Updating and maintaining this policy;
 - 2. Advising operating Human Resources organizations on the administration of premium pay;
 - 3. Coordinating HHS reports to the Office of Personnel Management (OPM) on the administration of premium pay;
 - 4. Reviewing OPDIV requests for exceptions to premium pay regulations; and
 - 5. Upon concurrence, forwarding such requests to OPM for official authorization for exceptions to premium pay regulations.
- B. Operating Divisions (OPDIVs) are responsible for:
 - 1. Ensuring the compliance of the requirements of this policy within their respective organizations;
 - 2. Determining when a situation is an emergency which poses a direct threat to life or property;
 - 3. Establishing a process to ensure that all requirements for authorizing premium pay are properly approved, recorded, and documented. Documentation must be maintained with time and attendance data for six years; and
 - 4. Submitting to Operating Human Resources organizations requests for exceptions to premium pay guidance.
- C. Operating Human Resources organizations (OHROs) are responsible for:
 - 1. Advising OPDIVs on the use of premium pay;
 - 2. Calculating the proper amounts for premium pay;
 - 3. Making determinations regarding the applicability and qualifications of specific situations and employees for hazard pay eligibility; and

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4. Reviewing OPDIV requests for exceptions to Premium Pay guidance and forwarding for consideration, when appropriate, to OHR.
- D. Supervisors are responsible for considering and approving in advance and in writing, overtime work, compensatory time, and all other work resulting in premium pay compensation.
- E. Timekeepers are responsible for recording, documenting, and maintaining overtime usage records along with time and attendance data for six years.

550-1-50 Overtime, Compensatory Time Off, Call-Back Overtime, Preshift and Postshift Activity

- A. Overtime. Overtime is work approved or officially ordered, and performed by an employee in excess of 8 hours a day or in excess of 40 hours in an administrative workweek.
 1. The following are exceptions to the above rule:
 - a. Employees who are authorized to work compressed workweeks receive overtime pay for work in excess of those specified hours that constitute the compressed schedule (i.e., over 8 hours if their scheduled day is an 8 hour day, over 9 hours if their scheduled day is a 9 hour day).
 - b. Employees authorized to work flexible schedules and for whom credit hours are applicable receive overtime pay only for hours which are not credit hours.
 2. Overtime Pay. For employees with rates of basic pay equal to or less than the rate of basic pay for GS-10, step 1, the overtime hourly rate is the employee's hourly rate of basic pay multiplied by 1.5. For employees with rates of basic pay greater than the basic pay for GS-10, step 1, the overtime hourly rate is the *greater* of (a) the hourly rate of basic pay for GS-10, step 1, multiplied by 1.5, or (b) the employee's hourly rate of basic pay.
 3. Employees may not be compensated for overtime unless the work is authorized both in advance and in writing. In emergencies, employees may be ordered to work overtime without prior approval, provided approval is documented the next workday.
 4. For employees on non-reimbursable details outside the Department, OPDIVs must ensure that a clear understanding exists with the gaining organization with respect to when overtime may be worked and whether the cost of any overtime will be reimbursed.
- B. Compensatory Time Off. Time off with pay in lieu of overtime pay for irregular or occasional overtime work
 1. Except for compensatory time off for religious observances or compensatory time off related to travel, compensatory time may only be substituted for pay for irregular or occasional

overtime, i.e., overtime work that is not part of an employee's regularly scheduled administrative workweek.

2. FLSA-exempt employees whose basic rate of pay exceeds GS-10, step 10 may be compensated for irregular or occasional overtime with an equivalent amount of compensatory time off instead of overtime pay.
 3. An employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned. If accrued compensatory time off is not used by an employee within 26 pay periods or if the employee transfers to another agency or separates from Federal service before the expiration of the 26 pay period time limit, the employee must be paid for the earned compensatory time off at the overtime rate in effect when earned.
 4. An employee must be paid for compensatory time off not used by the end of the 26th pay period after the pay period during which it was earned at the overtime rate in effect when earned if the employee is unable to use the compensatory time off because of placement in a leave without pay status (LWOP). The LWOP status may be a result of: 1) The performance of duties in a uniformed service; or 2) An on-the-job injury with entitlement to injury compensation.
 5. Compensatory time is subject to the same maximum pay limitation as is overtime (see Section 550-1-110 E.)
- C. Call-Back Overtime. Call-back overtime occurs when employees are required to return to work after leaving the work site or to perform overtime work on a day for which they are not scheduled to work.
1. A minimum of two hours overtime is credited, even though the employee may perform no work after returning to the work site. It is possible to have several call-backs in a 24-hour period. Each call-back is individually payable until the aggregate pay for exempt employees totals the maximum payable rate for grade GS-15 in a pay period. (There is no maximum pay limit for FLSA non-exempt and wage grade employees.)
 2. Because call-back work is irregular/occasional overtime work, compensatory time off may be substituted for overtime pay at the employee's request. The employee receives a minimum of two hours compensatory time per call-back.
 3. Call-backs on a holiday are paid at the holiday rate for hours which correspond to the employee's regularly scheduled work time. Outside these hours, call-backs are paid at the authorized overtime rate of pay.
- D. Preshift and Postshift Activity. Preshift activity is a preparatory activity an employee performs prior to the commencement of the employee's principal activities. Postshift activity is a concluding activity an employee performs after the completion of the employee's principal activities.

Employees who perform preshift or postshift activities outside their daily scheduled tour of duty must be compensated with irregular or occasional overtime, if all of the following criteria are met:

1. The preshift or postshift activity is closely related to the employee's principal activities and is indispensable in the performance of the principal activities;
2. The preshift or postshift activity requires a time of more than 15 minutes (i.e., at least 11 minutes) a day; and
3. The time period for the preshift or postshift activity has to be scheduled by an official with authority to approve irregular or occasional overtime. The overtime credited must not exceed the time scheduled.

550-1-60 REGULARLY SCHEDULED STANDBY DUTY PAY

- A. Regularly scheduled standby duty pay. Regularly scheduled standby duty pay is approved premium pay on an annual basis for an employee in lieu of regularly scheduled overtime, night, holiday, and Sunday pay. It is sometimes referred to as standby duty premium pay, standby premium pay, or standby pay.
- B. Standby duty premium pay is appropriate when an employee is required to remain at, or within the confines of, a duty station longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Standby duty includes periods of time during which no work is performed while the employee is waiting for an event to occur which will require his/her attention. The pay covers both non-work and work times. In contrast, employees who are "on call" are paid only when they perform work; if called to work, they receive call-back overtime.
- C. Standby duty pay equals 25% of rate of basic pay, including locality pay. Because availability pay is premium pay, it is subject to the biweekly maximum limitation on premium pay.
- D. Standby duty is associated with an employee's regularly assigned duties. The hours during which standby duty is required must be included in the employee's tour of duty. This tour of duty must be established on a regularly recurring basis over a substantial period of time. The result is that standby pay becomes basic pay and the extra pay earned is creditable for retirement and life insurance purposes only; it is not basic pay for overtime purposes. Because of this effect, OHROs must issue a Standard Form 50, Notification of Personnel Action, for every employee authorized regularly scheduled standby pay.
- E. Premium pay for standby duty is in lieu of all other premium pay, including regularly scheduled overtime, holiday pay, night pay differential, and Sunday premium pay. However, standby duty pay is not in lieu of irregular or occasional overtime that is authorized and ordered in excess of the regularly scheduled standby duty. Employees on

standby duty may be paid overtime or receive compensatory time for irregular or occasional overtime work.

- F. An employee whose standby duty includes a holiday is still on standby duty during the holiday. The employee must be excused from work on the holiday when he/she is not needed that day. If the employee is absent during the holiday and has not been excused because (s)he is not needed that day, the employee must be charged annual leave, sick leave, leave without pay, or absence without leave, as appropriate.

550-1-70 PAY FOR ADMINISTRATIVELY UNCONTROLLABLE WORK

- A. Administratively uncontrollable work. Administratively uncontrollable work (AUW) is work in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty.
- B. AUW is paid on an annual basis determined by a percentage of the employee's rate of basic pay and the average number of hours a week of irregular or occasional overtime work. Premium pay is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay.

550-1-80 NIGHT PAY DIFFERENTIAL, HOLIDAY PAY, SUNDAY PAY

- A. Night Pay Differential is pay for nightwork. Nightwork is regularly scheduled work performed by an employee between the hours of 6 p.m. and 6 a.m. Except as otherwise provided in this section, an employee who performs nightwork is entitled to pay for that work at his or her rate of basic pay plus a night pay differential amounting to 10 percent of his or her rate of basic pay..
1. Night pay differential for GS employees is 10 percent of their scheduled pay rate regardless of grade. This pay differential is paid for any *regularly* scheduled work performed between 6:00 p.m. and 6:00 a.m.
 2. Night pay differential is paid in addition to overtime, Sunday, or holiday premium pay.
 3. Care must be taken to distinguish between irregular or occasional overtime work at night and a temporary change in a daily tour of duty. An employee may be temporarily assigned to a daily tour of duty that includes night work. In this circumstance, the employee is entitled to a night pay differential, even when the scheduling of the assignment occurs within the administrative workweek.
 4. An employee with a total amount of paid leave of eight hours or more during a pay period, day or night, cannot earn a night pay differential for that leave period.

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- B. Holiday Premium Pay. Holiday Pay is pay for work performed on a holiday during hours which correspond to regularly scheduled hours of duty.
1. Double time is the basic pay normally received for the holiday. Overtime work performed in excess of eight hours on a holiday is paid on the basis of time and one-half for full-time employees in accordance with 5 U.S.C. § 5542(a). An employee who is required to report for work on a holiday is paid for at least two hours, whether or not work is actually performed.
 2. Employees on fixed compressed schedules receive pay for work on a holiday not to exceed the number of hours of the compressed work schedule for that day. Hours in excess of scheduled work requirements for that day are paid at the overtime pay rate and in accordance with overtime pay rules. Employees on flexible schedules may not receive holiday pay for more than eight hours.
 3. Pay for work on a holiday for part-time employees is applicable only to their regularly scheduled tour of duty for the day on which the holiday occurs, provided that day is one of their scheduled work days. Work in excess of the employees scheduled tour of duty is paid at the basic rate, not to exceed eight hours. Work in excess of eight hours is paid at the overtime rate of pay.
 4. All holiday work must be approved in advance and in writing. Each OPDIV is required to ensure that holiday premium pay (like overtime) is properly approved, recorded, and documented. Documentation must be maintained with time and attendance data for six years.
- C. Sunday Premium Pay. Sunday premium pay (also referred to as Sunday pay differential) is paid to full-time employees for non-overtime, regularly scheduled work when any part of that daily tour of duty is on a Sunday. Sunday premium pay is not authorized for part-time or intermittent employees.
1. A full-time employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work.
 2. Sunday must be a part of the employee's regularly scheduled tour in order for the employee to receive Sunday premium pay.
 3. An employee is not entitled to Sunday premium pay while engaged in training, except when the employee is given training during a period of duty for which he or she is already receiving premium pay. This exception does not apply to an employee assigned to full-time training at institutions of higher learning.
 4. Sunday premium pay is not paid for overtime hours, only for the regularly scheduled tour hours. Sunday premium pay hours begin at 12:01 a.m., Sunday morning, and continues until 12 midnight, Sunday night. If an employee's regular schedule starts at 12:01 a.m. Monday, that employee *does not* earn Sunday premium pay. If *any part* of the daily tour of duty falls on Sunday, the *entire tour* for that day is considered to be Sunday work. For example, if an employee works 8 hours during a basic tour of duty that begins on Saturday and ends on Sunday, and also works 8 hours during a basic tour of duty that begins on the same Sunday and ends on Monday, the employee is entitled to 16 hours of Sunday premium pay.

550-1-90 HAZARDOUS PAY DIFFERENTIAL

- A. Hazardous pay differential. Hazardous pay differential is additional pay for the performance of hazardous duty and duty involving physical hardship. Efforts to avoid and protect employees from such hazards, physical hardships, or working conditions is of utmost priority. Pay differential should only be made where such exposure is unavoidable.
- B. Hazardous pay differential may not be more than 25 percent of the employee's rate of basic pay. OHROs are responsible for making determinations regarding whether specific situations and the employee qualify for hazard pay differential. Determinations should be based on the position and justified in the evaluation statement. If the issue is not addressed in the documentation, the presumption is that hazardous duty pay is payable. Employee entitlement is recorded on the SF-50B, Notification of Personnel Action.
- C. Requests to designate additional hazardous duty exposure situations other than those identified in 5 CFR 550, Appendix A, Subpart I, should be submitted by the OPDIV Head through their OHRO for ASAM/OHR endorsement prior to submission to OPM for approval.

550-1-100 LAW ENFORCEMENT AVAILABILITY PAY

- A. Law Enforcement Availability Pay. Law Enforcement Availability Pay (LEAP) is pay to compensate criminal investigators for unscheduled duty in excess of the 40 hour workweek based on the needs of the employing agency. It is paid only for periods of time during which the criminal investigator receives basic pay. LEAP is the lesser of:
 - 1. Twenty (25%) percent of an employee's basic rate of pay; or
 - 2. The biweekly pay limitation.
- B. LEAP is paid on an annual premium pay basis in lieu of standby duty pay, administratively uncontrollable overtime pay, and irregular or occasional pay overtime pay. Criminal investigators receiving LEAP may earn overtime pay for regularly scheduled overtime, excluding the first two hours of overtime work on any regular workday.
- C. The criminal investigator must meet the "substantial hours requirement" which is an annual average number of hours of unscheduled duty per regular workday of two hours or more. Unscheduled duty hours include hours not part of the 40 hour basic workweek of the criminal investigator and not a part of compensated regularly scheduled overtime hours.
- D. The criminal investigator must be determined to be generally and reasonably accessible to perform unscheduled duty based on the needs of the OPDIV. The criminal investigator

and the supervisor must annually certify that he/she currently meets, and is expected to continue to meet, the “substantial hours” requirement.

550-1-110 PAY LIMITATIONS

- A. Biweekly pay. Biweekly pay is limited by the amount of premium pay that can be paid during a biweekly pay period. Premium pay cannot be paid to General Schedule employees (including law enforcement officers and other covered employees) which would cause an employee’s basic pay, overtime pay, the dollar value of compensatory time off, night pay, annual premium pay, Sunday premium pay, and holiday premium pay to exceed the **greater** of the biweekly rate for:
1. GS-15, step 10 (including any applicable special salary rate or locality rate of pay);
or
 2. level V of the Executive Schedule.
- B. Emergency situations. The limitation for a pay period may be exceeded in emergency situations which pose a direct threat to life or property. OPDIVs have the authority to make emergency determinations. Even when an emergency determination is made, the annual maximum earnings limitation cannot exceed the **greater** of the **annual** rate (1) for a GS-15 (including any applicable locality payment or special rate supplement), or (2) for level V of the Executive Schedule in effect on the last day of the calendar year.
- C. Other. The following types of premium pay remain subject to a biweekly limitation when other premium payments are subject to an annual limitation:
1. Standby duty pay;
 2. Administratively uncontrollable overtime pay;
 3. Availability pay for criminal investigators
- D. Law enforcement officers. The maximum limitation is either 150 percent of the minimum rate for GS-15 or the rate for Level V of the Executive Schedule, whichever is less.
- E. Compensatory time. The biweekly pay limitation in is also a ceiling on compensatory time off. Compensatory time off is merely an alternative form of payment for overtime work. An employee may not exceed the biweekly pay limitation by choosing compensatory time off as a substitute for monetary overtime pay.
1. For FLSA-exempt employees, an employee's total biweekly pay (the basic pay plus premium pay, plus the compensatory hours earned, plus the compensatory hours balance already accrued which was carried over) cannot exceed the greater of the biweekly rate (1) for a GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) for level V of the Executive Schedule.

2. At no time may the number of compensatory hours accumulate beyond the number that would allow the FLSA-exempt employee's biweekly pay to equal that of a GS-15, Step 10, employee. For FLSA non-exempt employees, the dollar value of compensatory time off when it is liquidated, or for the purpose of applying pay limitations, is the amount of overtime pay the employee otherwise would have received for the hours of the pay period during which compensatory time off was earned by performing overtime work.

550-1-120 DOCUMENTATION AND ACCOUNTABILITY

A. Documentation

1. For employees on non-reimbursable details outside the Department, OPDIVs must provide written documentation to the gaining organization regarding when overtime may be worked and whether the cost of any overtime will be reimbursed.
2. Each OPDIV is required to ensure that premium pay is properly approved, recorded, and documented. Documentation must be maintained with time and attendance data for six years.
3. Each OPDIV must maintain documentation of all determinations of emergency situations.
4. OHROs must issue a Standard Form 50, Notification of Personnel Action, for employees authorized premium pay related to regularly scheduled standby pay, administratively uncontrollable work, and hazardous duty pay.
5. Supervisors will document all authorized overtime, holiday work, and standby pay in advance and in writing. All emergency work which is approved must be documented the next work day.

B. Accountability

The Office of Human Resources will conduct periodic accountability reviews to analyze OPDIV and OHRO compliance with the requirements of this Instruction.