


Approved for Release
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DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES BULLETIN 028, FY06, (CFR 550)

SUBJECT: Overtime for Employees Detailed to the Federal Emergency Management Agency for Hurricane Relief and Recovery Efforts

EFFECTIVE DATE: Upon release of this HR Bulletin and retroactive to the date of an employee's detail to the Federal Emergency Management Agency (FEMA)

EXPIRATION DATE: Effective until the termination of the employee's detail to FEMA

BACKGROUND: Office of Personnel Management (OPM) guidance requires agencies to determine, on a workweek-by-workweek basis, an employee's status under the Fair Labor Standards Act (FLSA) when the employee is temporarily assigned to perform work defined as FLSA nonexempt (covered under FLSA) in connection with an emergency. Agencies are also required to determine the date the emergency situation no longer exists to terminate the application of changes in FLSA exemption status.

PURPOSE: The purpose of this HR Bulletin is to provide guidance to agencies on determining the appropriate overtime payment for employees who volunteered for and were deployed to FEMA to perform emergency work in connection with Hurricanes Katrina, Rita, and Wilma.

APPLICABILITY: This HR Bulletin applies to employees deployed to FEMA to assist in hurricane relief and recovery efforts who performed nonexempt work for more than 20 percent of the work time, in each workweek, during deployment.

PROCEDURES: Employees whose position of record is classified as FLSA exempt must be treated as FLSA nonexempt for overtime pay purposes for any workweek in which the employee performed nonexempt work for more than 20 percent of the work time. The determination about an employee's FLSA status is based on the work the employee actually performed during the emergency without regard to the employee's FLSA status or grade level in the position of record. For all employees deployed to

FEMA, the end date of the emergency situation is the end date of the employee's deployment to FEMA.

In order to establish the type of work performed by employees while on detail to FEMA, and, thus, the employees' FLSA status for applicable workweeks, bureau human resources offices will: (1) identify their respective employees who are exempt from the overtime pay provisions of the FLSA, but who reported overtime on their time and attendance (T&A) forms while detailed to FEMA to perform emergency work in connection with Hurricanes Katrina, Rita, and/or Wilma; (2) ask those identified employees to document the work they performed during each of those weeks and the percentage of work time spent on such work; and (3) determine whether those identified employees are entitled to FLSA overtime pay for the overtime worked.

For employees who can provide a signed statement of what their duties were, the percentage of time (on a weekly basis) that they performed those duties, and the days they performed those duties, bureau human resources offices will make a determination as to whether the duties meet the FLSA criteria for exempt versus nonexempt status. For those employees that are determined to have met the nonexempt criteria for any week in which an employee spent more than 20 percent of his/her time performing FLSA nonexempt work and was undercompensated, bureaus human resources offices will correct that employee's pay.

Under the FLSA, overtime pay is determined by multiplying the employee's "straight time rate of pay" by all overtime hours worked plus one-half of the employee's "hourly regular rate of pay" times all overtime hours worked (for additional guidance see <http://www.opm.gov/oca/pay/HTML/computeflsa.asp>). Further, FLSA overtime is not considered in applying the biweekly or annual premium pay limitations.

REFERENCES: 5 CFR 551.104, 5 CFR 551.205 through 551.207, 5 CFR 551.208(d).

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