



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

6.550.2

SEPTEMBER 22, 2021

EFFECTIVE DATE

(09-22-2021)

PURPOSE

- (1) This transmits the new IRM 6.550.2, Premium Pay Under Title 5 and the Fair Labor Standards Act (FLSA) and Compensatory Time Off for Travel.

MATERIAL CHANGES

- (1) This new IRM incorporates a Program Scope and Objectives subsection as required by IRM 1.11.2, Internal Management Documents (IMD) System, Internal Revenue Manual (IRM) Process.
- (2) Premium pay and compensatory time off for travel policies are relocated to this IRM from IRM 6.550.1, Pay Administration (General), and subsections may have updated names, numbers, references, hyperlinks and/or terminology.
- (3) IRM 6.550.2.2.1(3) adds corrections to an underpayment of premium pay in a previous calendar year are treated as such for applying the annual cap.
- (4) IRM 6.550.2.2.1(4) adds premium pay remains capped at the biweekly limitation when other premium payments are subject to the annual limitation.
- (5) IRM 6.550.2.2.2(3) expands on overtime thresholds including adding the substitution rule for leave without pay taken in the same workweek as overtime worked.
- (6) IRM 6.550.2.2.2(7) adds Exhibit 6.550.2-1, Overtime and Compensatory Time Off in lieu of Overtime under Title 5 and the Fair Labor Standards Act (FLSA) Table.
- (7) IRM 6.550.2.2.3(4) adds the requirement for an employee to notify management of the number of overtime hours worked using established business unit procedures.
- (8) IRM 6.550.2.2.5 adds a new subsection called Shelter in Place to address an employee's compensation for situations that require management to restrict an employee to the agency's premises.
- (9) IRM 6.550.2.2.7 adds a new subsection called Substitution Rule to address work performed outside of the TOD that must be substituted for an equal amount of nonpaid leave.
- (10) IRM 6.550.2.2.16 adds a new subsection called Payment of Compensatory Time Off in lieu of Overtime Pay upon Transfer or Separation from Federal Service to address situations where the employee separates from Service.
- (11) IRM 6.550.2.2.17(2)(h) clarifies that employees on a flexible work schedule, working regularly scheduled compensatory time off, may earn night pay differential.
- (12) IRM 6.550.2.2.17(5) clarifies the payment of night pay differential for employees working a flexible work schedule.
- (13) IRM 6.550.2.2.17(7) adds Exhibit 6.550.2-2, Night Pay Differential Table, to aid in determining entitlement to night pay differential.
- (14) IRM 6.550.2.2.18(2) adds reference to holiday pay and links to IRM 6.610.1, IRS Hours of Duty.

- (15) IRM 6.550.2.3(2) adds language to aid in making a determination under what legal authority an employee may be compensated for time spent traveling.
- (16) IRM 6.550.2.3(3) adds language that, to the extent possible, an employee will not be required to travel during non-duty hours.
- (17) Subjects about compensatory time off for travel are now available in a job aid found on the IRS Source.
- (18) IRM 6.550.2.3.4(5) adds the retention standard for compensatory time off for travel documentation.

EFFECT ON OTHER DOCUMENTS

This IRM is new. It replaces premium pay administration guidance previously contained in IRM 6.550.1.1, Pay Administration (General) issued December 16, 2009.

AUDIENCE

All business units

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IRS Human Capital Officer

6.550.2

Premium Pay Under Title 5 and the Fair Labor Standards Act (FLSA) and Compensatory Time Off for Travel

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6.550.2.1 (09-22-2021) Program Scope and Objectives

- (1) **Purpose:** This IRM provides Servicewide policy, standards, requirements and guidance relating to the administration of Premium Pay and Compensatory Time Off for Travel. This IRM must be read and interpreted in accordance with pertinent law, Government wide regulations, Treasury Human Resources Directives, as well as applicable case law. The material in this chapter is organized generally with the order of regulations contained in 5 Code of Federal Regulations (CFR) Part 550 and 5 CFR Part 551. This guidance may be supplemented periodically by interim policy guidance from the IRS Human Capital Office.
- (2) **Audience:** Unless otherwise indicated, the policies, authorities, procedures and instructions contained in this IRM apply to all business units. Bargaining Unit (BU) employees should review negotiated agreement provisions relating to subjects in the IRM. Should any of these instructions conflict with provisions in the negotiated agreement, the agreement prevails.
- (3) **Policy Owner:** Human Capital Officer.
- (4) **Program Owner:** Policy and Compliance (P&C).
- (5) **Program Goals:** This IRM is designed to provide IRS guidance relating to Premium Pay and Compensatory Time Off for Travel regulations found in 5 CFR Part 550 and 5 CFR Part 551.
- (6) **Primary Stakeholders:** HCO, Talent Acquisition and HCO, HR Shared Services (HRSS).

6.550.2.1.1 (09-22-2021) Background

- (1) IRM 6.550.2, Premium Pay Under Title 5 and the Fair Labor Standards Act (FLSA) and Compensatory Time Off for Travel, replaces guidance previously contained in IRM 6.550.1.1, Pay Administration Under Title 5 and the FLSA - General Provisions and 6.550.1.10, Compensatory Time Off for Travel.

6.550.2.1.2 (09-22-2021) Authority

- (1) **Laws:** Title 5, United States Code (USC), Government Organization and Employees at: <http://uscode.house.gov>
 - a. §5542 - Overtime rates; computation
 - b. §5543 - Compensatory time off
 - c. §5545 - Night, standby, irregular, and hazardous duty differential
 - d. §5545a - Availability pay for criminal investigators
 - e. §5546 - Pay for Sunday and holiday work
 - f. §5547 - Limitation on premium pay
 - g. §5550b - Compensatory time off for travel
 - h. §6101 - Basic 40-hour workweek; work schedules; regulations
 - i. §6123 - Flexible schedules; computation of premium pay
 - j. §6128 - Compressed schedules; computation of premium pay
- (2) **Regulation:** Title 5, Code of Federal Regulations (CFR) at <https://www.ecfr.gov/cgi-bin/ECFR?SID=48e607ea83e9e1153545d6f6e5a3c168&>
 - a. Part 550 - Pay Administration (General)
 - Subpart A - Premium Pay
 - Subpart N - Compensatory Time off for Travel

- b. Part 551 - Pay Administration under the Fair Labor Standards Act
- c. Part 610- Hours of Duty

- (3) **Delegation of Authority:** Delegation Order 6-12, Absence and Leave, at IRM 1.2.2.7.8.
- (4) **Delegation of Authority:** Delegation Order 6-23, Delegations of Authority to Accomplish Pay Administration, at IRM 1.2.2.7.13.

6.550.2.1.3
(09-22-2021)
**Roles and
Responsibilities**

- (1) The Human Capital Officer is the executive responsible for this IRM and overall Servicewide policy for premium pay and compensatory time off for travel.
- (2) The HCO, P&C is responsible for developing and publishing content in this IRM.
- (3) The HCO, HRSS is responsible for administering the payment of premium pay covered in this IRM, providing systems, tools, and all related instructions to accomplish proper recordation on official source documents from which an employee is paid (e.g., time and attendance (T&A) documents and personnel action requests (PAR)).

Note: Specific information and instructions on T&A reporting, approvals, and maintenance requirements are found in Standard Operating Procedure (SOP) MPC-02, issued by the Memphis Payroll Center, at: http://hco.web.irs.gov/PPS/SOP-UOG/MPC_02.html

- (4) All managers are responsible to use government resources efficiently and effectively, with minimum potential for waste, fraud and mismanagement. As such, they must administer policies covered in this IRM with integrity and in compliance with applicable laws, regulations and policies (e.g. overseeing the approval of overtime management, applications for annual maximum earnings limitation, and ensuring employees do not exceed statutory pay caps).
- (5) An employee is responsible to input their Time and Attendance (T&A) accurately, to review their Earnings and Leave Statements and Notifications of Personnel Actions (SF-50s) and to immediately notify their manager of any discrepancies.

6.550.2.1.4
(09-22-2021)
**Program Management
and Review**

- (1) This IRM provides policy and guidance for premium pay and compensatory time off for travel. P&C gauges effectiveness of premium pay and compensatory time off for travel policy based on feedback from customers and program owners about subjects contained in this IRM. During review and publishing of this IRM, sections are revised, added or deleted based in part on this process. P&C plays an integral role in program management, review and effectiveness by:
 - a. Supporting HRSS to deliver biweekly paychecks through prompt and accurate posting and processing of all T&A records.
 - b. Supporting HCO, Labor/Employee Relations and Negotiations to provide related support and expertise to service management, field and embedded labor/employee relations staff and all employees on premium pay and compensatory time off for travel.

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6.550.2.1.5 (09-22-2021) Program Controls

- (1) P&C develops and deploys policies, materials and programs to increase Servicewide awareness and understanding of premium pay and compensatory time off for travel. Additionally, P&C collaborates with other HCO organizations and Servicewide stakeholders to support education and outreach activities as they relate to premium pay and compensatory time off for travel.
- (2) The following activities help ensure program success:
 - a. Conducting annual policy reviews;
 - b. Publishing educational articles such as Leaders Alerts and IRS Headlines; and
 - c. Maintaining accurate and up-to-date program websites.

6.550.2.1.6 (09-22-2021) Definitions

- (1) **Administrative workweek:** seven consecutive 24-hour periods designated within the IRS as beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday.
- (2) **Compressed work schedule (CWS):** a category of Alternative Work Schedules (AWS) that are fixed-work schedules where, for full-time employees, the basic 80-hour biweekly work requirement is completed in fewer than 10 workdays, e.g., 5/4-9 and 4/10. In the case of part-time employees, they complete the basic biweekly work requirement in fewer than 10 workdays and requires employees to work more than 8 hours on at least one day. Employees on CWS are not eligible to earn credit hours. See IRM 6.610.1, IRS Hours of Duty.
- (3) **Criminal Investigator:** a law enforcement officer as defined in 5 USC 5541(3).
- (4) **Day:** (for overtime purposes) any 24- hour period designated by an agency within the administrative workweek applicable to the employee.
- (5) **Fair Labor Standards Act (FLSA):** provides minimum standards for wages, overtime entitlements, and administrative procedures by which covered worktime must be compensated.
- (6) **Flexible work schedule (FWS):** work schedules that allow employees to determine a schedule within established limits. IRS-approved FWS include flexitour with credit hours, gliding, and maxiflex. However, some of these FWS are not available to all employees. Employees on FWS are eligible to earn and use credit hours. All FWS include core hours and days and flexible hours/bands. See IRM 6.610.1, IRS Hours of Duty.
- (7) **Holiday work:** nonovertime work performed by an employee during a regularly scheduled daily TOD on a holiday. See IRM 6.610.1, IRS Hours of Duty.
- (8) **Irregular or occasional overtime work:** overtime work that is officially ordered or approved and is not part of an employee's regularly scheduled administrative workweek.
- (9) **Nightwork:** regularly scheduled work performed by an employee between the hours of 6:00 p.m. and 6:00 a.m.
- (10) **Official Duty Station (ODS):** 50-mile geographic area surrounding an employee's official worksite. The "post of duty" (official worksite) as noted on the most

current Notification of Personnel Action, SF-50, is used by the employing agency to determine whether travel time is compensable as overtime pay under Title 5 and the FLSA.

- (11) **Rate of basic pay:** rate fixed by law and administrative action for a position before any deductions.
 - a. Rates of basic pay within IRS include the underlying GS rate, LEO special base rate, locality rate, underlying IR payband rate, IR locality rate and a retained rate.
- (12) **Regular overtime work:** overtime work that is officially ordered or approved in writing and part of an employee's regularly scheduled administrative workweek, reoccurs on a regular basis, and/or is over an extended period of time.
- (13) **Regular working hours:** days and hours of an employee's regularly scheduled administrative workweek. See IRM 6.610.1, IRS Hours of Duty.
- (14) **Regularly scheduled administrative workweek:** period within an administrative workweek, established in accordance IRM 6.610.1, IRS Hours of Duty.
- (15) **Regularly scheduled work:** work that is scheduled in advance of the administrative workweek under the agency's procedures for establishing workweeks. See IRM 6.610.1, IRS Hours of Duty.
- (16) **Suffered or permitted work:** work performed by an FLSA non-exempt employee for the benefit of the agency, whether requested or not, provided the employee's manager knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.
- (17) **Sunday work:** nonovertime work performed by an employee during a regularly scheduled daily TOD on a Sunday. For this TOD, no more than 8 hours of work is Sunday work. If the employee is on a compressed work schedule, then the entire regularly scheduled daily TOD constitutes Sunday work.
- (18) **Tour of duty (TOD):** hours of a day (daily TOD) and the days of an administrative workweek (weekly TOD) that constitute an employee's regularly scheduled administrative workweek.
- (19) **Travel:** for work purposes that an authorized agency official or otherwise authorized under established Servicewide policies approves.
- (20) **Travel outside the duty station:** more than 50 miles from the official duty station. Travel within the duty station is not creditable for compensatory time off for travel.
- (21) **Workday:** period between the commencement of the principal activities that an employee is engaged to perform on a given day, and the cessation of the principal activities for that day. All time spent by an employee in the performance of such activities is hours of work. The workday is not limited to a calendar day or any other 24-hour period (e.g., night or swing shifts).

6.550.2.1.7
(09-22-2021)

Related Resources

- (1) IRS Source at: <https://irssource.web.irs.gov/SitePages/Pay.aspx>
- (2) Office of Personnel Management (OPM) Pay & Leave Fact Sheets at: <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Fact-Sheets>.

- (3) The Office of Personnel Management Handbook for Alternative Work Schedules at: <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/>.
- (4) Information and Procedures for Compensatory Time Off for Travel at: <https://irssource.web.irs.gov/Lists/Timekeeping/DispItemForm.aspx?ID=22&Source=https%3A%2F%2Firssource%2Eweb%2Eirs%2Egov%2FLists%2FTimekeeping%2FLeave%2Easpx&ContentTypeId=0x0100F2EAA53D1A6684428BC9F569CCCD3F64>

6.550.2.2
(09-22-2021)
Premium Pay

- (1) This section provides guidance for premium pay administration as stipulated under Title 5 and the FLSA. These provisions are codified in 5 CFR Parts 550 and 551 and apply to IRS employees, except for those identified below:
 - a. An employee covered by the Federal Wage System;
 - b. An employee outside the continental United States or in Alaska who is paid in accordance with local prevailing wage rates for the areas in which employed; or
 - c. A member of the Senior Executive Service (SES).

6.550.2.2.1
(09-22-2021)
Maximum Earnings Limitations

- (1) The maximum biweekly and annual earnings limitations described below apply to all employees covered under this IRM chapter, except overtime pay for FLSA nonexempt employees per 5 CFR Section 551.501(d).
- (2) Biweekly maximum earning limitation:
 - a. Except as provided in (c) below, an employee may be paid premium pay under this subpart to the extent the payment does not cause the total of their basic pay and premium pay for any pay period to exceed the greater of:
 - 1. The biweekly rate for either a GS-15, step 10 (including any applicable locality payment or special rate supplement); or
 - 2. The biweekly rate payable for level V of the Executive Schedule.
 - b. In applying the biweekly limitation under this section, premium pay of the types listed in (4) below must be paid before paying any other type of premium pay.
 - c. This paragraph does not apply to any pay period where an employee performs work in connection with an emergency or mission-critical work as discussed in (3) below.
- (3) Annual maximum earnings limitation for work in connection with an emergency or work critical to the mission of the IRS:
 - a. Any pay period where an appropriate authority determines that an emergency or mission-critical work exists, an employee will be paid premium pay under the annual limitation described in (c) below. As defined in 5 CFR Section 550.106, the Department of the Treasury is the appropriate authority for determination of an emergency. The Commissioner of Internal Revenue is delegated the authority to determine mission-critical work.

- b. The determination under (a) above should be implemented as soon as possible. Premium pay under the annual limitation is effective on the first day of the pay period in which the emergency or mission-critical work began.
 - c. In any calendar year, where an employee performed work in connection with an emergency or mission-critical work, they must be paid premium pay to the extent that the payment does not cause the total of annual basic pay and premium pay to exceed the greater of:
 - 1. The maximum rate for GS-15 in effect on the last day of the calendar year (including a locality-based comparability payment or a special rate supplement); or
 - 2. The rate payable for level V of the Executive Schedule on the last day of the calendar year.
 - d. Any payment made in the current calendar year that corrects an underpayment of premium pay in a previous calendar year must be treated as being made in the previous calendar year for the purpose of applying the annual cap.
- (4) Premium payments capped on a biweekly basis otherwise an annual limitation applies.
- a. The following types of premium pay remain subject to a biweekly limitation when other premium payments are subject to an annual limitation under (3) above:
 - 1. Standby duty pay under 5 USC 5545(c)(1);
 - 2. Administratively uncontrollable overtime pay under 5 USC 5545(c)(2);
 - 3. Availability pay for criminal investigators under 5 USC 5545a.
 - b. An employee must receive the types of premium pay identified in paragraph (a) of this section before receiving any other type of premium pay.

6.550.2.2.2
(09-22-2021)
**Overtime General
Provisions**

- (1) The Title 5 and the Fair Labor Standards Act (FLSA) provide statutory guidance in determining the applicability and computation of an employee's overtime payment and compensatory time off in lieu of overtime payment.
 - a. The IRS is responsible for determining whether employees are covered under the provisions of the FLSA under 5 CFR Part 551, subpart B. The duties documented in the employee's position description determine whether an employee is FLSA exempt (not covered) or FLSA nonexempt (covered). FLSA coverage is stated on the employee's Standard Form 50 (SF-50), box 35, as E (exempt) or N (nonexempt).
 - b. Title 5 rules (5 CFR Part 550) do not cover nonexempt employees for overtime pay but do cover exempt and nonexempt employees in all other aspects of pay administration.
- (2) An employee who works a full-time, part-time or intermittent TOD is eligible for overtime pay.
- (3) Except as provided below, overtime is work performed that is officially ordered or approved in writing in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek.

Note: See IRM 6.550.2.2.7, Substitution Rule, to address what is considered overtime if an employee uses leave without pay (LWOP) or absence without leave (AWOL).

- a. Flexible Work Schedules (FWS): After applying the Substitution Rule, paragraph (3) above defines overtime but does not include hours that are worked voluntarily, including credit hours or hours that an employee is “suffered or permitted” to work which are not officially ordered in advance.
 - b. Compressed Work Schedules (5/4-9 and 4/10): After applying the Substitution Rule, overtime is all work performed that is officially ordered or approved in excess of the compressed work schedule. For example, an employee on a 5/4-9 compressed work schedule ordered to work 1 hour of overtime on a day that has a 9-hour daily work requirement will work 10 hours on that workday.
 - c. Part-time work schedules: An employee working a part-time schedule earns overtime for work performed that is officially ordered or approved in excess of 8 hours in a day or 40 hours in a workweek. Time outside a part-time employee’s scheduled TOD, but not in excess of 8 hours in a day or 40 hours in a week, are nonovertime hours of work compensated at the employee’s regular rate of basic pay. For example, an employee with a 7-hour daily work requirement ordered to work an additional 2 hours will work 9 hours on that day. The first extra hour is considered a nonovertime hour and is compensated at the employee’s regular rate of basic pay; the second hour worked is considered overtime since that hour is in excess of the 8-hour daily overtime threshold.
 - d. Credit hours voluntarily worked are not overtime hours.
- (4) Overtime work is scheduled and credited in 15-minute increments and is rounded up or down to the nearest 15-minute increment.
 - (5) Overtime rate for an employee performing overtime work at night, a Sunday or a holiday is the same rate as for any other time.
 - (6) Overtime for criminal investigators receiving law enforcement availability pay (LEAP) is covered under 5 CFR Section 550.181-187 and IRM 6.550.2.2.21, Law Enforcement Availability Pay (LEAP).
 - (7) See Exhibit 6.550.2-1 Overtime and Compensatory Time Off in lieu of Overtime under Title 5 and the Fair Labor Standards Act (FLSA) Table, which outlines the key components of overtime and compensatory time for FLSA exempt and nonexempt employees.

6.550.2.2.3
(09-22-2021)
**Authorization of
Overtime Pay**

- (1) The authority to order or approve overtime, work on holidays, and overtime duty for which compensatory time off will be granted in lieu of overtime pay, is delegated to no lower than second-level managers as outlined in IRM 1.2.2.7.13, Delegation Order 6-23.
- (2) Officials authorized to order or approve overtime duty are guided by the principle that overtime, whether on a paid or compensatory time off basis, may only be used when necessary to accomplish the mission of the IRS and when funds are available.
- (3) Overtime work must be officially ordered or approved in writing by an authorized official as noted in (1) above. The written order and approval are maintained by the business unit in accordance with records retention requirements for T&A records.

Note: Business units must establish their own internal procedures and documents for requesting, approving and maintaining overtime records.

- (4) An employee is responsible for notifying management of the number of overtime hours worked using established business unit procedures.

6.550.2.2.4
(09-22-2021)

Determining Hours of Work

- (1) Time spent in preshift or postshift activities closely related to an employee's principal activities and is indispensable to the performance of those activities is credited as hours of work if the total time spent is more than 10 minutes per workday. This time may not be aggregated over a pay period, a year or any other time period to meet minimum requirements under the FLSA (67 Federal Labor Relations Authority No. 76).
- (2) Time spent on paid leave or in a paid nonwork status, including holidays, accrued credit hours and compensatory time off taken, are deemed hours of work and do not reduce the amount of overtime pay to which the employee may be entitled.
- (3) Unpaid leave to include LWOP, AWOL and/or suspension is a nonpay status and is not considered as hours of work. See IRM 6.550.2.2.7, Substitution Rule.
- (4) Include hours of night, Sunday or holiday work in determining the total number of hours worked in an administrative workweek.
- (5) Call-back overtime work is irregular or occasional overtime work performed on an employee's nonscheduled workday, where they must return to the place of employment. The employee is paid a minimum of 2 hours of overtime, regardless of the actual time worked.
- (6) Stand-by duty is hours of work if, for work-related reasons, the employee is restricted to a designated post of duty and is assigned to a state of readiness to perform work, with limitations so substantial that the employee cannot use the time for personal purposes.
- (7) On-call status is **not** hours of work if the employee can leave a phone number or carry an electronic device for ease of contact; even if the employee is required to remain within a reasonable call-back radius or if the employee can make arrangements for another person to perform work that may arise during the on-call period.
- (8) Time spent in other activities including training, handling grievances, performing representational functions, receiving medical attention and performing charitable activities, is considered hours of work for FLSA nonexempt (covered) employees under the circumstances described at 5 CFR Section 551.423-426.

6.550.2.2.5
(09-22-2021)

Shelter in Place

- (1) Emergency situations that require management to restrict employees to the agency's premises are commonly referred to as shelter in place. This section provides guidance on the appropriate compensation for employees in common situations.
- (2) An employee on their regular TOD is provided administrative leave, see IRM 6.610.1.3, Administrative Leave and Dismissals.

- (3) Pursuant to 5 CFR Section 550.112(k), 5 CFR Section 551.401(a), and 5 CFR Section 551.431, an employee on scheduled overtime and the overtime is not cancelled is provided overtime pay (or compensatory time off) up until the time the building closed.
- (4) Pursuant to 5 CFR Section 550.112(k), 5 CFR Section 551.431, Comptroller General Decisions B-187181 and B-211007, an employee not on their regular TOD or on scheduled overtime that is detained beyond their TOD and who:
 - a. Did not continue working (e.g., went to cafeteria or lounge area) is not entitled to compensation. Time spent waiting is not primarily for the benefit of the agency and is not compensable.
 - b. Is directed to continue to work is eligible for overtime. A FLSA exempt (not covered) employee may be offered compensatory time off in lieu of overtime (See IRM 6.550.2.2.10, Compensatory Time Off in lieu of Overtime Pay for FLSA Exempt (not covered) Employees).
 - c. Is on an FWS and requests to continue working may earn credit hours.
 - d. Continues to work but was not ordered to or continues to work and is not on a work schedule that allows earning credit hours **may** or **may not** be eligible for compensation based on the applicable rules and regulations. Review each on a case-by-case basis.

Note: This may be a case of “suffer and permit” overtime for FLSA non-exempt employees.

- (5) An employee detained beyond their TOD due to a shelter in place drill may be entitled to overtime or compensatory time off based on the employee’s coverage under the FLSA.

6.550.2.2.6 (09-22-2021) Time Spent Traveling

- (1) Home-to-Work Travel (Home-to-Work/Work-to-Home Commuting Time). Travel from home to the official duty station (ODS) and the ODS to home, is not hours of work and is not compensable. Similarly, such travel may not serve to decrease the hours of work in the administratively scheduled workday or workweek (5 CFR Section 550.112(j)(2) and 5 CFR Section 551.422(4)(b) and (d)).
 - a. Home-to-work/work-to-home commuting time includes: travel before or after the workday or between an employee’s home and a temporary duty location (TDY) (e.g., a field worksite, taxpayer worksite, airport, or training location) within 50 miles of the ODS is not hours of work and is not compensable.
 - b. An employee may travel during their unpaid lunch or meal period during the workday. If the travel time extends beyond the length of the lunch period, the employee must account for more travel time used by charging leave, earned credit hours, earned compensatory time, leave without pay, etc. An employee may not extend their TOD to make up for the travel time used beyond the length of their lunch period.
 - c. A telework employee that is directed to travel into the ODS during the regularly scheduled workday is compensated with hours of work (the 50-mile radius does not apply).
 - d. When an employee travels, before or after the workday, directly from home to a temporary duty area (TDY) outside the limits (more than 50

miles) of their ODS, the time the employee would have spent in normal home-to-work/work-to-home commuting time must be deducted from hours of work.

- (2) When the agency offers an employee a mode of transportation but the employee chooses to use an alternate mode, or travels on a different day or time than that selected by the agency, the employee will be credited with the lesser of:
 - a. The actual travel time resulting in hours of work under this subsection or
 - b. The estimated travel time that would have been considered hours of work had the employee used the offered mode of transportation or the selected travel time. (5 CFR Section 551.422(c)).
- (3) For FLSA exempt (not covered) employees, as provided in 5 CFR Section 550.112(g), time in travel status more than 50 miles from the ODS using the most common route is considered hours of work if the travel:
 - a. Is within the regularly scheduled workweek (compensated with regular pay) or
 - b. Is outside the regularly scheduled workweek, (compensated with overtime or compensatory time off in lieu of overtime), if the agency orders or approves **and** meets one of the conditions below:
 - Involves performance of actual work while traveling (e.g., courier required to drive a delivery van to deliver mail);
 - Is incident to travel that involves the performance of work while traveling (e.g., courier driving an empty delivery van on return to duty station);
 - Traveling is under such arduous and unusual conditions that the travel is inseparable from work (e.g., travel on unusually adverse terrain or under severe weather conditions); or
 - Traveling from an event that the agency in the executive branch of the Government (including the IRS) could not schedule or administratively control (e.g., training scheduled solely by a private firm).
- (4) For FLSA nonexempt (covered) employees, as provided in 5 CFR Section 551.422 and 5 CFR Section 551.401(h), time in travel status more than 50 miles from the ODS using the most common route is considered hours of work if the travel:
 - a. Is during regular work hours (compensated with regular pay).
 - b. Is outside regular work hours (compensated with overtime or compensatory time off in lieu of overtime), and
 - Requires the employee to drive a vehicle or perform other work while traveling;
 - Requires the employee to travel as a passenger on a 1-day round trip from the ODS; or
 - Requires the employee to travel on an overnight assignment away from the ODS during hours on a non-workday that correspond to the employee's regular working hours.
- (5) When travel is more than 50 miles from the ODS, an employee may be entitled to earn compensatory time off for travel outside regular duty hours when ordered or approved in advance of the travel and the travel time is not otherwise compensated as hours of work under another legal authority (e.g.,

availability pay, overtime pay (as described above)). See IRM 6.550.2.3, Compensatory Time Off for Travel.

- (6) For travel on a holiday, see IRM 6.550.2.2.18, Pay for Holiday Work.

6.550.2.2.7
(09-22-2021)
Substitution Rule

- (1) In accordance with 5 CFR Section 550.112(d), the following substitution rules must be applied before an employee is paid at the overtime rate:
- Daily substitution rule: For any period of nonpaid leave (e.g., LWOP, AWOL, furlough and/or suspension), in the same workday, an equal period of work performed outside the basic daily work requirement will be substituted before any remaining hours of work performed may be paid at the overtime rate on the basis of exceeding 8 hours in a day. For example: an employee is scheduled to work an 8-hour day. The employee takes two hours of LWOP at the beginning of their TOD, works the remaining 6 hours in their TOD, and then works 2 additional hours past their TOD. The 2 hours past their TOD are substituted for the LWOP and paid at the employees' regular rate of pay.
 - Weekly substitution rule: For any period of nonpaid leave (e.g., LWOP, AWOL, furlough and/or suspension), in the same administrative workweek, an equal period of work performed outside the basic workweek requirement will be substituted before any remaining hours of work performed may be paid at the overtime rate on the basis of exceeding 40 hours in a workweek. For example: an employee takes 8 hours of LWOP on Monday and works 2 hours past their TOD on Tuesday and Thursday. The 4 hours worked on Tuesday and Thursday are substituted for the LWOP and paid at the employees' regular rate of pay.
- (2) Any hours worked that are substituted for nonpaid leave (e.g., LWOP, AWOL, furlough and/or suspension) are paid at the employee's regular rate of basic pay.
- (3) In accordance with IRM 6.630.1, Absence and Leave, in these instances the employees' T&A records must be reviewed for accuracy.

6.550.2.2.8
(09-22-2021)
Title 5 Overtime

- (1) FLSA exempt (not covered) employees, who work full-time, part-time, or intermittent tours of duty are eligible for Title 5 overtime pay.
- (2) For information on the effects of performing temporary work or duties on an employee's FLSA exemption status see IRM 6.550.2.2.12, Effect of Temporary and Emergency Work on FLSA Coverage.

6.550.2.2.9
(09-22-2021)
Computation of Overtime Pay for FLSA Exempt (not covered) Employees

- (1) Overtime under Title 5 will be calculated and paid as provided by 5 CFR Section 550.112 and 5 CFR Section 550.113. Basic provisions follow.
- (2) The hourly rate of basic pay includes locality pay or special rates but excludes pay of any other kind (e.g., night differential or cost of living allowance).
- (3) For an employee whose rate of basic pay does not exceed GS-10, step 1, the hourly overtime rate is 1 1/2 times their hourly rate of basic pay, including locality or special rate but exclusive of any other kind of pay (e.g., night differential or cost of living allowance).

- (4) For each employee whose rate of basic pay exceeds the GS-10, step 1, the overtime hourly rate is the greater of 1 1/2 times the hourly rate of basic pay for GS-10, step 1 or the employee's hourly rate of basic pay.
- (5) The overtime rate for an employee performing overtime work at night, a Sunday, or a holiday is the same rate as any other time; that is 1 1/2 times the hourly rate of basic pay.
- (6) Use of LWOP reduces the amount of overtime an employee may earn. See IRM 6.550.2.2.7, Substitution Rule.
- (7) Use of paid leave does not reduce the amount off overtime pay to which the employee is entitled.

6.550.2.2.10

(09-22-2021)

**Compensatory Time Off
in lieu of Overtime Pay
for FLSA Exempt (not
covered) Employees**

- (1) As provided by 5 USC 5543 and 5 CFR Section 550.114, an employee may request and be granted compensatory time off from their regularly scheduled TOD instead of receiving overtime pay for an equal amount of irregular or occasional overtime work. Overtime must be ordered or approved prior to compensatory time off in lieu of overtime work being performed. All hours worked must meet overtime rules before employees are granted compensatory time.
- (2) Managers may require and compensate employees whose rate of basic pay is above the rate for a GS-10, step 10, with compensatory time off instead of overtime pay for irregular or occasional overtime work.
- (3) Accumulation of compensatory time off may not exceed 80 hours at any time and must be used within 26 pay periods after it is earned or prior to separation from the IRS, whichever occurs first. Unused compensatory time off will be forfeited unless the employee meets one of the criteria below, in which case they will be paid for that unused compensatory time at the rate when it was earned:
 - a. The failure to take the compensatory time off is due to an exigency of the IRS, as determined by an SES member, and the use of that time was scheduled in writing before the 24th pay period after it was earned;
 - b. The employee separates from federal service or is placed in a LWOP status to perform service in the uniformed services; or
 - c. The employee separates from federal service or is placed in a LWOP status because of an on-the-job injury with entitlement to injury compensation.
- (4) Compensatory time off must be used before annual leave as long as this does not result in the loss of any accumulated annual leave. If the use of the compensatory time would result in the forfeiture of annual leave, then annual leave may be used.
- (5) Compensatory time off is earned and may be used in 15-minute increments.
- (6) The value of earned compensatory time off is included in applying the biweekly premium pay cap (See IRM 6.550.2.2.1, Maximum Earnings Limitations. Thus, employees may not earn compensatory time off to avoid the biweekly premium pay cap.
- (7) SES employees are not eligible for compensatory time off.

6.550.2.2.11
(09-22-2021)
Overtime under the FLSA

- (1) The coverage status of an employee under the FLSA is based on a review of the duties performed against the criteria stated in 5 CFR Part 551, subpart B. Determination of this status is part of the classification process.
 - a. Employees are presumed to be covered under the FLSA (i.e., FLSA (nonexempt)) unless the IRS determines that the employee clearly meets the exemption criteria.
 - b. The burden of proof rests with the agency that asserts the exemption.
 - c. FLSA determinations have no direct relationship to bargaining unit status.

6.550.2.2.12
(09-22-2021)
Effect of Temporary and Emergency Work on FLSA Coverage

- (1) Effect of performing temporary work or duties on FLSA exemption status:
 - a. This guidance and the provisions at 5 CFR Section 551.211 apply when an employee must temporarily perform work or duties that are not consistent with the primary duties of their job for an extended period, that is, for more than 30 consecutive calendar days (i.e., the 30-day test).
 - b. **Primary duty** typically means the duty that constitutes the major part (over 50%) of an employee's work (5 CFR Section 551.104). However, a duty making up less than 50% of an employee's work may be credited as the primary duty for FLSA exemption purposes if that duty:
 1. Constitutes a substantial, regular part of the work assigned and performed;
 2. Is the reason for the existence of the position; and
 3. Is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made.
 - c. Except in the case of an emergency (see (4) below), an employee's FLSA exemption status should not change based on a snapshot of their work, but rather on an assessment of the temporary duties over a reasonable period of time (i.e., the 30-day test).
- (2) Effect on FLSA nonexempt (covered) employees:
 - a. An employee who temporarily performs work different than their primary duties remains covered by the FLSA for the entire period of the temporary work assignment; unless the employee's primary duties for the period of the temporary work are FLSA exempt (not covered) and performed consistently for more than 30 consecutive calendar days. This rule applies regardless of a change in geographic location.
 - b. When the employee meets the provisions above, the employee becomes FLSA exempt (not covered) for the entire period of the work or duties. IRS must recalculate the employee's total pay retroactive to the beginning of the period because the employee is not entitled to FLSA overtime but may be owed Title 5 overtime pay.
 - c. For a recalculation of overtime pay, submit an OS GetServices ticket.
- (3) Effect on FLSA exempt (not covered) employees:
 - a. An employee who temporarily performs work different than their primary duties remains exempt for the entire period of the temporary work assign-

- ment; unless the employee's primary duties for the period of temporary work are covered under the FLSA and performed consistently for more than 30 consecutive calendar days.
- b. When the provisions above have been met, the employee becomes FLSA nonexempt (covered) for the entire period of the work or duties. IRS must recalculate the employee's total pay retroactive to the beginning of the period because the employee is not entitled to Title 5 overtime pay but may be owed overtime pay under the FLSA.
 - c. For a recalculation of overtime pay, submit an OS GetServices ticket.
- (4) In emergency situations where human life, safety, property is threatened, and/or operations of an activity could be disrupted, and employees are assigned to temporary work in connection with that emergency:
- a. FLSA exempt (not covered) employees' status is determined on a workweek basis and will retain their status if the employee's primary duties are defined as exempt. A FLSA exempt employee becomes FLSA nonexempt (covered) for any workweek in which the employee's primary duties for the period of the emergency are FLSA covered as defined in this section.
 - b. FLSA nonexempt (covered) employees remains nonexempt regardless of the duties performed.
- (5) Temporary changes to an employee's primary duties beyond 30 days that affect an employee's FLSA status (as described in paragraphs (2) and (3) above) must be documented through a Personnel Action Request (PAR) as a detail and reflected in the timekeeping system. Contact your organization's timekeeping system representative for specific instructions.

6.550.2.2.13
(09-22-2021)

**Computation of
Overtime Pay for FLSA
Nonexempt (covered)
Employees**

- (1) Overtime under the FLSA will be calculated and paid as provided by 5 CFR Part 551, subpart E. Basic provisions follow.
- (2) The hourly rate of basic pay includes locality pay or special rates but excludes pay of any other kind (e.g., night pay differential, cost of living allowance).
- (3) Generally, employees will receive overtime pay for all hours of work more than 8 hours in a day or 40 hours in a workweek at a rate equal to 1 1/2 times their hourly rate of pay.
- (4) The maximum earnings limitations for overtime pay do not apply to employees covered under the FLSA.
- (5) The overtime rate for an employee performing overtime work at night, a Sunday, or a holiday is the same rate as any other time (i.e., 1 1/2 times the hourly rate of pay).
- (6) Use of LWOP, AWOL, furlough, and/or suspension reduce the amount of overtime an employee may earn. See IRM 6.550.2.2.7, Substitution Rule.
- (7) Use of paid leave does not reduce the amount of overtime an employee may earn.

Premium Pay Under Title 5 and the Fair Labor Standards Act (FLSA) and Compensatory Time Off for Travel 6.550.2

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6.550.2.2.14
(09-22-2021)

Compensatory Time Off in lieu of Overtime Pay for FLSA Nonexempt (covered) Employees

- (1) As provided by 5 USC 5543 and 5 CFR Section 551.531, an employee may request and be granted compensatory time off from their regularly scheduled TOD instead of receiving overtime pay for an equal amount of irregular or occasional overtime work. Overtime must be ordered or approved prior to compensatory time off in lieu of overtime work being performed. All hours worked must meet overtime rules before employees are granted compensatory time.
- (2) Employees may never be required to accept compensatory time off under any circumstances. However, they may voluntarily request compensatory time off.
- (3) Accumulation of compensatory time off may not exceed 80 hours at any time and must be used within 26 pay periods after it is earned.
- (4) Employees must be paid for any unused compensatory time off earned if they do not use it within the prescribed time limits (26 pay periods) at 1 1/2 times their hourly rate at the time it was earned.
- (5) Compensatory time off must be used before annual leave as long as this does not result in the loss of any accumulated annual leave. If the use of the compensatory time would result in the forfeiture of annual leave, then annual leave may be used.
- (6) Compensatory time off is earned and may be used in 15-minute increments.

6.550.2.2.15
(09-22-2021)

FLSA Claims and Compliance

- (1) Statute of Limitations: 29 USC 255(a) imposes a 2-year statute of limitations, except in cases of willful violation where the statute of limitations is 3 years, for all claims under the FLSA.
- (2) Avenues of review:
 - a. As provided by 5 CFR Section 551.703, bargaining unit employee claims must be filed using the negotiated grievance procedure (NGP) as the exclusive administrative remedy. There is no right for further administrative review by the IRS or the Office of Personnel Management (OPM) unless the bargaining agreement specifically excluded matters under the Act from the scope of the NGP.
 - b. A non-bargaining unit employee may file a claim with the IRS via a OS GetServices ticket or with OPM Classification and Pay Claims Program Manager, Merit System Audit and Compliance, Office of Personnel Management, 1900 E Street, NW, Room 6484, Washington, DC 20415, but may not pursue both simultaneously.
 - c. Claims must follow the provisions of 5 CFR Part 551, subpart G.

6.550.2.2.16
(09-22-2021)

Payment of Compensatory Time Off in lieu of Overtime Pay upon Transfer or Separation from Federal Service

- (1) An employee transferring between bureaus within the Department of the Treasury will carry any compensatory time off earned to the gaining bureau. The gaining bureau will credit the balance to the employee within the same pay period as previously credited with the losing bureau.
- (2) FLSA exempt (not covered) employees that transfer to another agency or separate from federal service before the expiration of accrued compensatory time off will forfeit any unused hours.

- (3) FLSA nonexempt (covered) employees that transfer to another agency or separate from federal service before the expiration of accrued compensatory time off must be paid at the overtime rate in effect when it was earned.

6.550.2.2.17

(09-22-2021)

Night Pay Differential

- (1) Authorization of night pay differential:
- a. Per 5 CFR Section 550.121, night work is regularly scheduled work performed by an employee between the hours of 6 p.m. and 6 a.m.
 - b. An employee who performs regularly scheduled night work is entitled to a differential of 10% of his or her rate of basic pay.
 - c. An employee may not receive night differential while in training, except as provided by 5 CFR Section 410.402.
- (2) Entitlement to night pay differential:
- a. An employee who regularly performs night work is entitled to night pay differential when requesting accrued religious compensatory time off, time-off award, military leave, court leave or when excused absence is granted.
 - b. **Absence on holidays or in travel status:** An employee is entitled to a night pay differential when excused from night work on a holiday and for hours in an official travel status, whether performing actual duty or not. Night pay differential is in addition to holiday pay and is not included in the rate of basic pay used to compute the holiday pay.
 - c. **Absence on leave (8-hour rule):** An employee will receive night pay differential for a period of paid annual (includes leave bank or donated leave) or sick leave only when the total amount of such leave, including night and day hours, is less than 8 hours in a pay period. An employee that takes 8 hours or more of paid leave within the pay period is not entitled to night differential pay while on paid leave.

Note: Paid hours of absence charged to credit hours, compensatory time off, time off for religious observance, military leave, time-off award, court leave, administrative leave, continuation of pay under the Federal Employees Compensation Act program, weather and safety leave, and other such paid absences do not count in calculating the 8-hours of paid leave limit.
 - d. **Overtime, Sunday and Holiday pay:** Night pay differential is paid in addition to overtime, Sunday, or holiday premium pay and is not basic pay for any purposes. There is no entitlement for night differential pay for irregular or occasional overtime.
 - e. **Credit hours:** An employee may not receive night pay differential when earning or using credit hours under 5 USC 6122.
 - f. **Compensatory time off:** An employee may not receive night pay differential when earning or taking compensatory time off as provided by 5 USC 5543.
 - g. **Compensatory time off for an employee covered by FWS:** Is entitled to night pay differential for regularly scheduled overtime work when **all** of the following requirements are met:
 - Works a FWS;
 - Works regularly scheduled overtime;
 - Performs regularly scheduled overtime work during night hours;
 - Requests compensatory time off in lieu of regularly scheduled overtime.

Note: An employee is not eligible for night pay differential when the employee takes compensatory time off.

- h. **Temporary assignment to a different daily TOD:** An employee is entitled to night pay differential when they are temporarily assigned during the administrative workweek to a daily TOD that includes night work. 5 CFR Section 550.122(d) distinguishes this temporary change from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek.

- (3) Night pay differential may be earned in 15-minute increments.
- (4) Intermittent employees are not eligible for night pay differential.
- (5) Employees on a FWS that includes night work are not eligible to earn night pay if the flexible time bands plus core hours offer at least 8 hours of work time between 6:00 a.m. and 6:00 p.m. and the employee voluntarily chooses a start time that would end the work day after 6:00 p.m. or before 6:00 a.m.
- (6) Employees on a compressed work schedule (CWS) are entitled to night pay differential for regularly scheduled work performed during night hours (6:00 p.m. to 6:00 a.m.).
- (7) See Exhibit 6.550.2-2, Night Pay Differential Table to determine eligibility for night pay differential.
- (8) The timekeeping system does not automatically generate night pay differential. Therefore hours worked that are entitled to night pay differential must be entered under the appropriate time code and is the employee's responsibility to immediately notify their manager and/or submit an OS GetServices ticket to P&PS to report any discrepancies.

6.550.2.2.18
(09-22-2021)
Pay for Holiday Work

- (1) A full-time employee who performs nonovertime holiday work is entitled to their rate of basic pay for the holiday plus holiday premium pay at a rate equal to his or her rate of basic pay (i.e., double time), for each hour worked up to 8 hours, or the number of holiday hours an employee is entitled to under IRM 6.610.1, Federal Holidays. Per 5 CFR Section 610.407, an employee on a CWS that performs work on a holiday during the employees regularly scheduled TOD is entitled to basic pay for the applicable number of holiday hours (8, 9 or 10 hours), plus holiday premium pay at their rate of basic pay for the number of hours worked that are not in excess of the employee's CWS for that day (e.g., employee on a 4/10 schedule would be paid as noted up to 10 hours on the holiday).
- (2) A part-time employee regularly scheduled to work on a holiday and who is ordered to work on that day, is entitled to holiday premium pay for up to 8 hours (or up to the maximum number of nonovertime hours in their compressed work schedule).
- (3) An intermittent employee who is ordered to work on a holiday is not entitled to holiday premium pay but is entitled to regular basic pay for up to 8 hours worked on a holiday.
- (4) An employee ordered to work on a holiday is entitled to at least 2 hours of holiday premium pay for holiday work.

- (5) An employee who works overtime on a holiday is entitled to overtime pay at the normal overtime rate for the overtime hours worked. An employee is not entitled to the holiday premium rate for any overtime hours worked on a holiday.
- (6) An employee is not entitled to holiday premium pay while in training, unless the training takes place on a holiday and the employee would otherwise be performing regularly scheduled holiday work (5 CFR Section 410.402).
- (7) An employee may not receive holiday premium pay for travel on a holiday unless that travel qualifies as hours of work. See IRM 6.550.2.2.6(3)b.
- (8) Employees on military or court leave are entitled to holiday premium pay if the holiday work was regularly scheduled and if the employee would have been required to work on that day.
- (9) Night shift employees excused from regularly scheduled night work on a holiday receive their rate of basic pay plus night pay.
- (10) Employees with a regularly scheduled administrative work week that includes Sunday premium pay will only receive basic pay for holiday hours that fall on Sunday. Employees with a regularly scheduled basic work week that includes Sunday are entitled to Sunday pay and pay for holiday work, if they must to work during holiday hours. For guidance on Sunday work, see IRM 6.550.2.2.20, Pay for Sunday Work.

6.550.2.2.19
(09-22-2021)
**Administratively
Uncontrollable Work**

- (1) Annual premium pay for this purpose will be paid as provided by 5 USC 5545(c)(2) and 5 CFR Section 550.151. However, an employee who receives law enforcement availability pay (LEAP) under 5 USC 5545a and 5 CFR Section 550.181-187 may not receive pay under this paragraph.
- (2) The authority to prescribe eligibility requirements and resolve questions concerning the payment of annual premium pay for administratively uncontrollable work and standby duty is delegated to the IRS Human Capital Officer. The authority may not be redelegated. See IRM 1.2.2.7.13, Delegation Order 6-23.
- (3) The authority to approve payment for administratively uncontrollable work is delegated to SES Executives (including those in an acting Director capacity pending OPM confirmation) and Streamlined Critical Pay Executives for employees within their Business Unit. This authority may not be redelegated. See IRM 1.2.2.7.13, Delegation Order 6-23.

6.550.2.2.20
(09-22-2021)
Pay for Sunday Work

- (1) Employees are entitled to an additional 25% of their rate of basic pay for work performed during a regularly scheduled TOD that begins or ends on a Sunday. Intermittent employees cannot receive Sunday premium pay.

Note: Per December 8, 2009 memorandum from OPM Director John Berry, part-time employees are eligible for Sunday premium pay (*Fathauer v. United States*).

- (2) Employees cannot receive Sunday premium pay for overtime hours.
- (3) Sunday premium pay may only be paid to employees who actually perform work on Sunday (i.e., no Sunday premium pay is awarded to employees on

paid leave, holiday, military leave, court leave, administrative leave, weather and safety leave or taking accrued compensatory time off or credit hours).

- (4) Employees who have two separate basic tours of duty on Sunday are entitled to Sunday premium pay for work performed on each TOD (e.g., if an employee works 8 hours that begins on Saturday and ends on Sunday then works 8 hours beginning on the same Sunday and ends on Monday, the employee is entitled to 16 hours of Sunday premium pay).
- (5) Sunday premium pay is in addition to premium pay for holiday work or night pay differential. Each entitlement to premium pay is computed separately as a percentage of an employee's rate of basic pay.
- (6) An employee is generally not entitled to Sunday premium pay while engaged in training. Exceptions to the general rule are listed at 5 CFR Section 410.402(b).
- (7) Employees must post 1 hour of annual leave or LWOP if they only work 7 hours on Sunday due to the commencement of daylight-saving time. See IRM 6.630.1, Daylight Saving Time, for more information.

6.550.2.2.21
(09-22-2021)
**Law Enforcement
Availability Pay (LEAP)**

- (1) Employees who meet the definition of criminal investigator in 5 CFR Section 550.103 and who fulfill the conditions and requirements of 5 USC 5545a and 5 CFR Section 550.181-187, must receive availability pay for unscheduled duty in excess of the 40-hour workweek based on the needs of the IRS. Such payment will be administered as provided by the laws and regulations indicated in this paragraph and IRM 9.11.4.9, Law Enforcement Availability Pay.
- (2) The authority to certify that a criminal investigator is available to perform irregular and unscheduled duty and receive availability pay is in IRM 1.2.2.7.13, Delegation Order 6-23.

6.550.2.3
(09-22-2021)
**Compensatory Time Off
for Travel - General
Provisions**

- (1) The IRS administers compensatory time off for travel in accordance with 5 USC 5550b and 5 CFR Part 550, subpart N. Refer to procedural instructions on the IRS Source at: <https://irssource.web.irs.gov/Lists/Timekeeping/DispItemForm.aspx?ID=22> as they relate to:
 - a. Creditable travel time;
 - b. Request and approval of compensatory time off for travel; and
 - c. Crediting, use, and recording compensatory time off for travel.
- (2) This section applies to all IRS employees except the Commissioner, members of the SES, and employees on intermittent work schedules.
- (3) If an employee is eligible to receive compensation under another legal authority (e.g., overtime pay), the employee may not receive compensatory time off for travel. See IRM 6.550.2.2.6, Time Spent Traveling, to determine any overtime entitlement.
- (4) Consistent with (1) above, to the extent possible, managers must not require employees to travel during non-duty hours. However, subject to the conditions outlined in this section, managers must grant compensatory time off for travel if the:

- a. Employee must travel more than 50 miles away from their assigned official duty station (ODS); and
- b. Travel time is not otherwise compensated as hours of work under another legal authority (e.g., availability pay, overtime pay (as described in IRM 6.550.2.2.6, Time Spent Traveling)).

6.550.2.3.1
(09-22-2021)

**Compensatory Time Off
for Travel - Creditable
Travel Time**

- (1) The following requirements must be met to be eligible for consideration:
 - a. Manager must order the employee to travel outside of regular working hours for the benefit of the government;
 - b. Travel must be outside of the employee's official duty station (defined as more than 50 miles for the purpose of this section);
 - c. Time spent in a travel status must not be otherwise compensable hours of work under any other legal authority (e.g., availability pay, overtime pay); and
 - d. Following management directed travel, employees must submit a written request within 5 workdays following completion of the travel to the immediate supervisor for final approval to earn the compensatory time off for travel. *Failure to submit the request within the specified time period will result in denial of the request.*
- (2) Time that is not considered creditable:
 - a. Time spent traveling to a new official duty station is not creditable for compensatory time off for travel. While an employee's travel to new permanent duty station is officially authorized travel, it is not travel between an official duty station and a temporary duty station or between two temporary duty stations. Therefore, the travel is not covered under the compensatory time off for travel provisions;
 - b. Extended or unusual waiting periods are not creditable for compensatory time off for travel. Employees must report and deduct these extended waiting time periods. This includes delays due to cancelled flights, inclement weather or missed connections. It is not creditable time even though it is outside the control of the employee;
 - c. Commute time which an employee normally encounters on a daily basis and is considered usual home-to-work and work-to-home time is only creditable under certain circumstances. When commute time is not creditable, it must be deducted from the employee's calculation even if the travel is completed on a non-workday, such as on a Saturday or a Sunday; and
 - d. Time spent traveling in connection with union activities is not considered official travel and is not creditable for compensatory time off for travel.
- (3) Multiple days of travel:
 - a. Only the first and last day of travel to a single destination assignment may be appropriate for compensatory time off for travel. If an employee on a multiple-day travel assignment chooses to return home at night or on weekends rather than use the temporary lodging authorized at the temporary duty location, only travel from home to the temporary duty location and return on the first and last days of travel are creditable hours. These travel hours on the first and last days are subject to the deductions for normal commuting time (home-to-work and work-to-home).
 - b. Most of the daily travel home is at the employee's request and for personal benefit. However, in rare instances, a business unit may have a

travel assignment for an employee where it would be advantageous to the government for the employee to return home rather than staying overnight at the temporary duty location. In these instances, the manager must first compare the reduced lodging costs against the additional travel expenditures plus the lost labor time (hourly rate of employee's salary times the number of hours that would be approved and credited for compensatory time off for travel). If there is a net savings to the government, then the manager may grant an exception to the first day/last day only policy with approval of the second-level manager.

- c. If an employee travels to multiple locations on multiple days, then the travel time may be creditable when directed and performed during nonduty hours.

(4) Multiple time zones:

- a. When travel involves two or more time zones, the time zone from the point of first departure must be used to determine how many hours the employee spends in a travel status to the temporary duty location and how many of those hours would be considered creditable in the computation of compensatory time off for travel.
- b. The creditable time for the return trip will be based upon the time zone of the temporary duty location.

(5) Alternative Transportation:

- a. The Official IRS Travel Guide, states, "Travel must be by the most expeditious means of transportation practicable ... the IRS must consider energy conservation, total cost to the Government (including costs of per diem, overtime, lost work-time and actual transportation costs)" If an employee uses an alternate mode of transportation, it may result in additional time spent in a travel status. When a supervisor approves use of an alternate mode of transportation, it must be approved prior to the travel and a determination made on the estimated time in a travel status that would have been creditable for compensatory time off for travel had the employee used the authorized mode of transportation.
- b. When a manager approves the alternative travel mode, the employee will be credited with the lesser of:
 - 1. The estimated number of creditable non-duty hours in a travel status for the authorized mode of travel; or
 - 2. The actual time of creditable non-duty hours authorized as an alternative.

6.550.2.3.2
(09-22-2021)

**Forfeiture of
Compensatory Time Off
for Travel**

- (1) Except as provided in (2) below, an employee forfeits previously earned compensatory time off for travel when any of the following occurs:

- a. The employee does not use it by the end of the 26th pay period after it was earned;
- b. Employee separates from federal service;
- c. Employee transfers to another agency in the Federal government (outside of the Department of the Treasury);
- d. Employee moves to a non-covered federal position (e.g., SES position); or

- e. The employee dies; in this instance, surviving beneficiaries are not entitled to payment of unused compensatory time off for travel earned.
- (2) An employee will not forfeit previously earned compensatory time off for travel after the end of the 26th pay period after it was earned or upon separation from IRS when:
 - a. An employee who separates or is placed in a LWOP status to perform service in the uniformed services as defined under 38 USC 4303 and 5 CFR Section 353.102 and later returns to the IRS through the exercise of a reemployment right provided by law, Executive Order, or regulations;
 - b. An employee who separates or is placed in a LWOP status because of an on-the-job injury with entitlements to injury compensation under 5 USC Chapter 81 and later recovers sufficiently to return to work; or
 - c. An employee fails to take the compensatory time off for travel due to an exigency of the IRS, as determined by an SES member, and the use of that time was scheduled in writing before the 24th pay period after it was earned.
- (3) In accordance with IRM 1.2.2.7.8, Delegation Order 6-12, for exceptions in (2) above, the time limit for use of compensatory time off for travel may be extended for up to an additional 26 pay periods.

6.550.2.3.3
(09-22-2021)
**Prohibition Against
Payment for Unused
Compensatory Time Off
for Travel**

- (1) According to 5 USC 5550b(b), an employee may not receive payment of any kind for compensatory time off for travel earned under 5 CFR Part 550 subpart N under any circumstances. This prohibition of payment also applies to surviving beneficiaries.

6.550.2.3.4
(09-22-2021)
**Compensatory Time off
for Travel - Premium and
Aggregate Pay Caps**

- (1) Earned compensatory time off for travel is not considered when applying the biweekly and annual premium pay limitations in 5 USC 5547, 5 CFR Section 550.105 through 5 CFR Section 550.107, or the aggregate limitation on pay in 5 USC 5307 and 5 CFR Part 530, subpart B.

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Exhibit 6.550.2-1 (09-22-2021)

Overtime and Compensatory Time Off in lieu of Overtime under Title 5 and the Fair Labor Standards Act (FLSA) Table

The following provides an overview of overtime, compensatory time off in lieu of overtime, and pay caps under Title 5 and the FLSA.

	FLSA Exempt (not covered):	FLSA Nonexempt (covered):
Overtime coverage:	Covered under Title 5, USC, with overtime pay provisions defined by 5 CFR Part 550, subpart A.	Covered under the FLSA defined in 5 CFR Part 551.
Overtime pay:	<ul style="list-style-type: none"> An employee whose rate of basic pay does not exceed GS-10, step 1, the hourly overtime rate is 1 1/2 times their hourly rate of basic pay, including locality or special rate but exclusive of pay of any other kind (e.g., night differential, cost of living allowance). Employees whose rate of basic pay exceeds GS-10, step 1, the overtime hourly rate is the greater of 1 1/2 times the hourly rate of basic pay for GS-10, step 1, or the employees hourly rate of basic pay. 	Generally, employees shall receive overtime pay for all hours of work in excess of overtime thresholds at a rate equal to 1 1/2 times their hourly rate of pay.
Compensatory time off in lieu of overtime:	Managers may require compensation with compensatory time off instead of overtime for employees, whose rate of pay is greater than GS-10, step 10.	May voluntarily request compensatory time off but managers may never be require employees to accept compensatory time off in lieu of overtime.
Compensatory time off in lieu of overtime limitations:	<ul style="list-style-type: none"> May not exceed 80 hours at any time. Used within 26 pay periods (on a first-in, first out basis). Unused compensatory time off will be forfeited unless the employee meets one of the criteria found in IRM 6.550.2.2.10(3), Compensatory Time Off in lieu of Overtime Pay for FLSA Exempt (not covered) Employees. 	<ul style="list-style-type: none"> May not exceed 80 hours at any time. Used within 26 pay periods (on a first-in, first out basis). Is paid for any unused compensatory time off earned if they do not use it within the prescribed time limits (26 pay periods) at 1 1/2 times their hourly rate at the time it was earned.

Exhibit 6.550.2-1 (Cont. 1) (09-22-2021)**Overtime and Compensatory Time Off in lieu of Overtime under Title 5 and the Fair Labor Standards Act (FLSA) Table**

Biweekly Pay Limitations on Premium Pay:	<p>May be paid premium pay under this subpart only to the extent the payment does not cause the total of his or her basic pay and premium pay for any pay period to exceed:</p> <ul style="list-style-type: none">• the biweekly rate for either a GS-15, step 10 (including any applicable locality payment or special rate supplement), or• the rate payable for level V of the Executive Schedule. <p>See IRM 6.550.2.2.1 , Maximum Earnings Limitations for more information.</p>	<p>Is not subject to the biweekly pay limitations for overtime and compensatory time off in lieu of overtime payment, but may be subject to limitations for other premium pay.</p>
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Exhibit 6.550.2-2 (09-22-2021)

Night Pay Differential Table

This table provides guidance on entitlement to night pay differential.

Rule	If an employee is:	Is the employee entitled to night pay differential?
1	Regularly scheduled (i.e., required by management) to perform work between 6:00 p.m. and 6:00 a.m.	Yes, an employee is entitled to night pay differential for regularly scheduled work performed between 6:00 p.m. and 6:00 a.m. (5 CFR Section 550.121(a))
2	Receiving night pay differential and then is temporarily assigned prior to the administrative workweek to a daytime daily tour which does not include night work.	No, an employee is not entitled to night pay differential as they are not performing work during night hours (i.e., between 6:00 p.m. and 6:00 a.m.). (5 CFR Section 550.121(a))
3	Not receiving night pay differential and is temporarily assigned during the administrative workweek to a daily TOD that includes night work. Note: E.g., An employee that works 8:00 a.m. to 4:30 p.m. is directed during the administrative workweek to work 1:30 p.m. to 10:00 p.m.	Yes, an employee is entitled to night pay differential for work performed between 6:00 p.m. and 6:00 a.m. when temporarily assigned during the administrative workweek to a daily TOD that includes night work. (5 CFR Section 550.122(d))
4	Assigned to work irregular or occasional overtime occurring at night. See IRM 6.550.2.1.6 for the definition of irregular or occasional overtime.	No, when working overtime, an employee is only entitled to night pay differential for regularly scheduled overtime worked between 6:00 p.m. and 6:00 a.m. (5 CFR Section 550.121(a))
5	Assigned to work regular overtime occurring at night. See IRM 6.550.2.1.6 for the definition of regular overtime.	Yes, night pay differential is paid, in addition to the applicable overtime rate, for regularly scheduled overtime worked between 6:00 p.m. and 6:00 a.m. (5 CFR Section 550.121(a) and 5 CFR Section 550.122(c))
6	Working compensatory time off in lieu of overtime for regular overtime at night. See IRM 6.550.2.2.17(2) (f) and (g) for additional information.	Yes, an employee is entitled to night pay differential when requesting compensatory time off in lieu of regularly scheduled overtime worked between 6:00 p.m. and 6:00 a.m. Night pay differential is paid at the time it is earned, not taken. (5 CFR Section 550.121(a), 5 CFR Section 550.114(b), and The OPM Handbook for Alternative Work Schedules)

Exhibit 6.550.2-2 (Cont. 1) (09-22-2021)

Night Pay Differential Table

Rule	If an employee is:	Is the employee entitled to night pay differential?
7	Regularly scheduled for night work and scheduled to attend a training class during night hours.	Yes, an employee attending training during a period of duty for which they are already receiving night pay differential shall continue to receive night pay differential. (5 CFR Section 410.402(b)(1) and 5 CFR Section 550.121(c))
8	Receiving night pay differential and then is scheduled to attend a training class during daytime hours.	No, a night shift employee attending a training class during daytime hours does not receive night pay differential. (5 CFR Section 550.121(c))
9	Working a CWS (i.e., 4/10 or 5/4-9) with a TOD that ends after 6:00 p.m. or begins before 6:00 a.m.	Yes, an employee on a CWS is eligible to earn night pay differential for hours worked between 6:00 p.m. and 6:00 a.m. (5 USC 5545(a) and 5 CFR Section 550.121)
10	Working a FWS (i.e., flexitour with credit hours, gliding or maxiflex) with a TOD that ends after 6:00 p.m. or begins before 6:00 a.m.	No, a day shift employee on a FWS is not eligible to earn night pay differential when the combination of flexible time band and core hours provide 8 or more hours for an employee to schedule their TOD between 6 a.m. and 6 p.m. (5 USC 6123(c)). However, FWS employees are entitled to night pay differential for any non-overtime (regular) work that must be completed (i.e., required by management) between 6:00 p.m. and 6:00 a.m. to complete an 8-hour daily TOD. This includes designated core hours.
11	Regularly scheduled for night work and is absent due to a holiday or other paid non-workday (i.e., excused absence).	Yes, an employee is entitled to night pay differential when excused from night work on a holiday or other paid nonworkday. (5 CFR Section 550.122(a))
12	Regularly scheduled for night work and is in official travel status, regardless of whether the employee actually performs work.	Yes, an employee is entitled to night pay differential while in official travel status for those hours that fall between 6:00 p.m. and 6:00 a.m. (5 CFR Section 550.122(a))
13	Regularly scheduled for night work and uses 8 or more hours (including day and night hours) of annual and sick leave in the pay period. See IRM 6.550.2.2.17(2)(c) for additional information.	No, when the total amount of paid annual and sick leave (including day and night hours) during the biweekly pay period is 8 hours or more , the employee is not entitled to night pay differential for paid leave. (5 CFR Section 550.122(b))

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Exhibit 6.550.2-2 (Cont. 2) (09-22-2021)

Night Pay Differential Table

Rule	If an employee is:	Is the employee entitled to night pay differential?
14	Regularly scheduled for night work and uses less than 8 hours (including day and night hours) of annual and sick leave in the pay period. IRM 6.550.2.2.17(2)(c) for additional information.	Yes, when the total amount of paid annual and sick leave (including day and night hours) during the biweekly pay period is less than 8 hours , the employee is entitled to night pay differential for this paid leave. (5 CFR Section 550.122(b))
15	Regularly scheduled for night work and requests hours of nonwork be charged to military leave, court leave, time off award religious compensatory time off or weather and safety leave.	Yes, paid nonwork charged to military leave, court leave, time off award, or religious compensatory time off is recorded without loss of pay to the employee. (27 Comp Gen 353; 49 Comp Gen 233; 5 CFR Section 451.104(a), 5 CFR Part 550 subpart J and 5 USC 6329c)
16	Regularly scheduled for night work and requests hours of nonwork be charged to credit hours or compensatory time off in lieu of overtime.	No, credit hours are not considered part of an employee's regularly scheduled work. See rule 6 , an employee is only entitled to night pay differential for compensatory time off in lieu of regularly scheduled overtime worked at night, at the time it is earned. (5 CFR Section 550.121(a) 5 CFR Section 550.121(a), 5 CFR Section 550.114(b), and The OPM Handbook for Alternative Work Schedules)

Note: The timekeeping system does not automatically generate night pay differential, therefore hours worked that are entitled to night pay differential must be input under the proper time code in the timekeeping system. Employees must ensure the timekeeping system input is correct and immediately notify their manager and/or HCO, HRSS through an OS GetServices ticket with any discrepancies.

