

Representative Karianne Lisonbee proposes the following substitute bill:

LAW ENFORCEMENT EMPLOYEE OVERTIME AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Derrin R. Owens

LONG TITLE

General Description:

This bill addresses overtime pay for certain state and local employees.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ subject to certain exceptions, modifies provisions relating to the number of hours that a state employee engaged in law enforcement activities must work to qualify for overtime pay;
- ▶ authorizes a city or county employing an individual engaged in law enforcement activities to compensate that individual for overtime pay in accordance with the modification described above; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:



26 [63A-17-502](#), as last amended by Laws of Utah 2022, Chapter 447

27 ENACTS:

28 [10-3-1109.5](#), Utah Code Annotated 1953

29 [17-33-11.7](#), Utah Code Annotated 1953

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

32 Section 1. Section [10-3-1109.5](#) is enacted to read:

33 **[10-3-1109.5](#). Overtime for law enforcement personnel.**

34 (1) As used in this section:

35 (a) "Nonexempt employee" means a municipal employee who is nonexempt under the
36 requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

37 (b) "Overtime" means hours worked in excess of a nonexempt employee's work period.

38 (c) "Regular hourly rate" means the hourly rate of pay a nonexempt employee receives
39 for hours worked during a work period.

40 (d) "Work period" means the maximum number of hours, within a specified number of
41 consecutive days, that a nonexempt employee may work before the nonexempt employee is
42 compensated for overtime.

43 (2) The governing body of a municipality that employs a nonexempt employee engaged
44 in law enforcement activities may, except as otherwise required by a contract or a collective
45 bargaining agreement, enact an ordinance or pass a resolution that:

46 (a) designates a work period for the nonexempt employee that is the same as, or
47 equivalent to, a work period described in Subsection [63A-17-502\(2\)](#); and

48 (b) compensates the nonexempt employee for overtime at a rate of one and one-half
49 times the nonexempt employee's regular hourly rate.

50 Section 2. Section [17-33-11.7](#) is enacted to read:

51 **[17-33-11.7](#). Overtime for law enforcement personnel -- Exception.**

52 (1) As used in this section:

53 (a) "Nonexempt employee" means an county employee who is nonexempt under the
54 requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

55 (b) "Overtime" means hours worked in excess of a nonexempt employee's work period.

56 (c) "Regular hourly rate" means the hourly rate of pay a nonexempt employee receives

57 for hours worked during a work period.

58 (d) "Work period" means the maximum number of hours, within a specified number of
59 consecutive days, that a nonexempt employee may work before the nonexempt employee is
60 compensated for overtime.

61 (2) This section does not apply to a county subject to Chapter 30a, Peace Officer Merit
62 System in Counties of the First Class Act.

63 (3) The legislative body of a county that employs a nonexempt employee engaged in
64 law enforcement activities may, except as otherwise required by a contract or a collective
65 bargaining agreement, enact an ordinance or pass a resolution that:

66 (a) designates a work period for the nonexempt employee that is the same as, or
67 equivalent to, a work period described in Subsection [63A-17-502\(2\)](#); and

68 (b) compensates the nonexempt employee for overtime at a rate of one and one-half
69 times the nonexempt employee's regular hourly rate.

70 Section 3. Section **63A-17-502** is amended to read:

71 **63A-17-502. Overtime policies for state employees.**

72 (1) As used in this section:

73 (a) "Accrued overtime hours" means:

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

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

79 (b) "Appointed official" means:

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

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

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

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

86 (c) "Department" means, except as otherwise provided in this section, the Department
87 of Government Operations, the Department of Corrections, the Department of Financial

88 Institutions, the Department of Alcoholic Beverage Services, the Insurance Department, the
89 Public Service Commission, the Labor Commission, the Department of Agriculture and Food,
90 the Department of Human Services, the Department of Natural Resources, the Department of
91 Transportation, the Department of Commerce, the Department of Workforce Services, the State
92 Tax Commission, the Department of Cultural and Community Engagement, the Department of
93 Health, the National Guard, the Department of Environmental Quality, the Department of
94 Public Safety, the Commission on Criminal and Juvenile Justice, all merit employees except
95 attorneys in the Office of the Attorney General, merit employees in the Office of the State
96 Treasurer, merit employees in the Office of the State Auditor, Department of Veterans and
97 Military Affairs, and the Board of Pardons and Parole.

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

100 (e) "Exempt employee" means a state employee who is exempt as defined by the [~~Fair~~
101 ~~Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.] FLSA.~~

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

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

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

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

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

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

113 (i) an appointed official;

114 (ii) an elected official; or

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

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

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

120 ~~[(i) for all nonexempt employees, except law enforcement and hospital employees, a~~

121 ~~consecutive seven day 24 hour work period of 40 hours;]~~

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

123 ~~[(iii) for nonexempt law enforcement and hospital employees, the period established by~~

124 ~~each department by rule for those employees according to the requirements of the Fair Labor~~

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

126 (m) "Work period" means:

127 (i) for a nonexempt employee, except a nonexempt law enforcement or hospital

128 employee, a consecutive seven day, 24 hour work period of 40 hours;

129 (ii) for an exempt employee, a 14 day, 80 hour payroll cycle;

130 (iii) for a nonexempt hospital employee, the period the division establishes by rule

131 according to the requirements of the FLSA; or

132 (iv) for a nonexempt law enforcement employee $\hat{S} \rightarrow$ as defined in the FLSA $\leftarrow \hat{S}$:

133 (A) who is employed by the Department of Natural Resources, the period the division

134 establishes by rule according to the requirements of the FLSA; or

135 (B) who is employed by a department other than the Department of Natural Resources,

136 the period the division establishes by rule in accordance with Subsection (2).

137 (2) Except for the Department of Natural Resources, the division shall require each

138 department employing a nonexempt law enforcement employee to designate one of the

139 following work periods applicable to that employee:

140 (a) 80 hours in a 14 consecutive day payroll cycle; or

141 (b) 160 hours in a 28 consecutive day payroll cycle.

142 ~~[(2)]~~ (3) Each department shall compensate each state employee who works overtime

143 by complying with the requirements of this section.

144 ~~[(3)]~~ (4) (a) Each department shall negotiate and obtain a signed FLSA agreement from

145 each nonexempt employee.

146 (b) In the FLSA agreement, the nonexempt employee shall elect either to be

147 compensated for overtime by:

148 (i) taking time off work at the rate of one and one-half hour off for each overtime hour

149 worked; or

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

152 (c) ~~[Any]~~ A nonexempt employee who elects to take time off under this Subsection
153 ~~[(3)]~~ (4) shall be paid for any overtime worked in excess of the cap established by the division.

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

156 (e) Each department shall:

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

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

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

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

167 ~~[(4)]~~ (5) (a) (i) Except as provided in Subsection ~~[(4)(a)(ii)]~~ (5)(a)(ii), each department
168 shall compensate ~~[exempt employees who work]~~ each exempt employee who works overtime
169 by granting ~~[them]~~ the employee time off at the rate of one hour off for each hour of overtime
170 worked.

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

175 (b) (i) Each department shall:

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

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

179 (ii) If any department fails to establish a uniform annual date as required by this
180 Subsection ~~[(4)]~~ (5), the director of the division, in conjunction with the director of the

181 Division of Finance, shall establish the date for that department.

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

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

186 ~~[(d)]~~ (c) The overtime authorized for an exempt employee under this Subsection (5) is
187 not an entitlement, a benefit, or a vested right.

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

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

193 (ii) unless authorized by the director of the division under Subsection ~~[(4)(a)(ii)]~~
194 (5)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by
195 paying the employee for the overtime or by granting the employee time off for the lapsed
196 overtime.

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

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

202 ~~[(5)]~~ (6) The division shall:

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

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

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

210 (i) establishing procedures for recording overtime worked that comply with FLSA
211 requirements;

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

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

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

218 (v) subject to the FLSA and Subsection (2), establishing the maximum number of
219 hours that a nonexempt employee may accrue before a department is required to pay the
220 employee for the overtime worked;

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

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

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

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

228 [~~(6)~~] (7) (a) In coordination with the procedures for recording overtime worked
229 established in rule by the division, the Division of Finance shall modify its payroll and human
230 resource systems to accommodate those procedures.

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

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

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

241 Section 4. **Effective date.**

242 This bill takes effect on July 1, 2024.