

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 1659

6 By: Aldridge

7 COMMITTEE SUBSTITUTE

8 [state government - state employees - minimum
9 overtime entitlement provisions - effective date]

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-1.3, as
13 last amended by Section 3, Chapter 347, O.S.L. 2002 (74 O.S. Supp.
14 2009, Section 840-1.3), is amended to read as follows:

15 Section 840-1.3. As used in the Oklahoma Personnel Act, unless
16 otherwise provided in Sections 840-1.1 through 840-6.9 of this
17 title:

18 1. "Agency" means any office, department, board, commission or
19 institution of the executive branch of state government;

20 2. "Employee" or "state employee" means an elected or appointed
21 officer or employee of an agency unless otherwise indicated;

22 3. "Appointing authority" means the chief administrative
23 officer of an agency;

24 4. "Classification" means:

- 1 a. the process of placing an employee into an appropriate
2 job family and level within the job family, consistent
3 with the allocation of the position to which the
4 employee is assigned, or
5 b. an employee's job family and the level at which work
6 is assigned;

7 5. "Classification plan" means the orderly arrangement of
8 positions within an agency into separate and distinct job families
9 so that each job family will contain those positions which involve
10 similar or comparable skills, duties and responsibilities;

11 6. "Classified service" means state employees and positions
12 under the jurisdiction of the Oklahoma Merit System of Personnel
13 Administration;

14 7. "Copy" means the duplication of an original document or
15 recording. The copy may be provided in an electronic format
16 generated from technology having electrical, digital, magnetic,
17 wireless, optical, electromagnetic, or similar capabilities;

18 8. "Entrance examination" means any employment test used by the
19 Office of Personnel Management to rank the names of applicants who
20 possess the minimum requirements of education, experience, or
21 licensure for a job or group of similar jobs on a register of
22 eligibles established by the Office of Personnel Management;

23 ~~8.~~ 9. "Job" means a position or job family level in a job
24 family;

1 ~~9.~~ 10. "Job family" means:

2 a. jobs which require similar core skills and involve
3 similar work, and

4 b. a logical progression of roles in a specific type of
5 occupation in which the differences between roles are
6 related to the depth and breadth of experience at
7 various levels within the job family and which are
8 sufficiently similar in duties and requirements of the
9 work to warrant similar treatment as to title, typical
10 functions, knowledge, skills and abilities required,
11 and education and experience requirements;

12 ~~10.~~ 11. "Job family level" means a role in a job family having
13 distinguishable characteristics such as knowledge, skills,
14 abilities, education, and experience;

15 ~~11.~~ 12. "Job family descriptor" means a written document that:

16 a. describes a job family, including, but not limited to,
17 the basic purpose, typical functions performed,
18 various levels within the job family, and the
19 knowledge, skills, abilities, education, and
20 experience required for each level, and

21 b. identifies the pay band assigned for each level;

22 ~~12.~~ 13. "Promotional examination" means any employment test
23 designated by the Office of Personnel Management to determine
24 further the qualifications of a permanent classified employee of a

1 state agency for employment in a different job for which the
2 employee possesses the minimum qualifications of education,
3 experience, or licensure within that agency;

4 ~~13.~~ 14. "Interagency transfer" means an action in which an
5 employee leaves employment with one agency and enters employment
6 with another agency while continuously employed with the state;

7 ~~14.~~ 15. "Intra-agency transfer" means moving an employee from
8 one position to another position with the same agency either with or
9 without reclassification;

10 ~~15.~~ 16. "Job-related organization" means a membership
11 association which collects annual dues, conducts annual meetings and
12 provides job-related education for its members and which includes
13 state employees, including any association for which payroll
14 deductions for membership dues are authorized pursuant to paragraph
15 5 of subsection B of Section 7.10 of Title 62 of the Oklahoma
16 Statutes;

17 ~~16.~~ 17. "Lateral transfer" means the reassignment of an
18 employee to another state job with the same pay band assignment as
19 the job family level in which the employee was classified prior to
20 the lateral transfer;

21 ~~17.~~ 18. "Merit Rules" or "Merit Rules for Employment" or "Merit
22 System of Personnel Administration Rules" means rules adopted by the
23 Administrator of the Office of Personnel Management or the Oklahoma
24 Merit Protection Commission pursuant to the Oklahoma Personnel Act;

1 ~~18.~~ 19. "Noncompetitive appointment" means the appointment of a
2 person to a noncompetitive job level within a job family;

3 ~~19.~~ 20. "Noncompetitive job" means an unskilled or semiskilled
4 job designated by the Office of Personnel Management as
5 noncompetitive. Noncompetitive jobs do not require written
6 examinations for placement on registers of eligibles;

7 ~~20.~~ 21. "Permanent classified employee" means a classified
8 service employee who has acquired permanent status in accordance
9 with the Oklahoma Personnel Act, and rules adopted pursuant thereto,
10 and who has the right to appeal involuntary demotion, suspension
11 without pay, and discharge to the Commission;

12 ~~21.~~ 22. "Presiding official" means a person serving the
13 Oklahoma Merit Protection Commission in the capacity of
14 administrative hearing officer, mediator, or other alternative
15 dispute resolution arbitrator or facilitator;

16 ~~22.~~ 23. "Progressive discipline" means a system designed to
17 ensure the consistency, impartiality and predictability of
18 discipline and the flexibility to vary penalties if justified by
19 aggravating or mitigating conditions;

20 ~~23.~~ 24. "Reclassification" means the process of changing a
21 classified employee from one job family to another job family or
22 from one job family level to another job family level in the same
23 job family, resulting in a change in the employee's assigned job
24 code;

1 ~~24.~~ 25. "Regular and consistent" means, in connection with the
2 work assignments of an employee, the usual and normal work
3 assignments of the employee, excluding incidental, casual, or
4 occasional tasks and activities the employee assumes without
5 direction to do so. Temporary work assignments of less than sixty
6 (60) days in any twelve (12) consecutive months period shall not be
7 considered regular and consistent;

8 ~~25.~~ 26. "Regular unclassified service employee" means an
9 unclassified service employee who is not on a temporary or other
10 time-limited appointment;

11 ~~26.~~ 27. "Supervisor" means a classified or unclassified officer
12 or employee who has been assigned authority and responsibility for
13 evaluating the performance of subordinates;

14 ~~27.~~ 28. "Unclassified service" or "exempt service" means
15 employees and positions excluded from coverage of the Oklahoma Merit
16 System of Personnel Administration;

17 ~~28.~~ 29. "Merit System" means the Oklahoma Merit System of
18 Personnel Administration;

19 ~~29.~~ 30. "Administrator" means the appointing authority of the
20 Office of Personnel Management;

21 ~~30.~~ 31. "Executive Director" means the appointing authority of
22 the Oklahoma Merit Protection Commission;

23 ~~31.~~ 32. "Office" means the Office of Personnel Management;

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1 ~~32.~~ 33. "Commission" means the Oklahoma Merit Protection
2 Commission;

3 ~~33.~~ 34. "Veteran" means a person who has been honorably
4 discharged from the Armed Forces of the United States and has been a
5 resident of Oklahoma for at least one (1) year prior to the date of
6 the examination; and

7 ~~34.~~ 35. "Voluntary out" means the voluntary separation of
8 employees from the state service in exchange for benefits offered by
9 an agency in order to reduce or eliminate the adverse impact of an
10 imminent reduction-in-force.

11 SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-2.15, as
12 last amended by Section 1, Chapter 212, O.S.L. 2006 (74 O.S. Supp.
13 2009, Section 840-2.15), is amended to read as follows:

14 Section 840-2.15 A. The federal Fair Labor Standards Act, 29
15 U.S.C., Section 201, et seq., provides for minimum standards for
16 ~~both wages and~~ overtime entitlement, and spells out administrative
17 procedures by which covered work time must be compensated. This
18 section is not a comprehensive listing of the provisions of the Fair
19 Labor Standards Act and regulations promulgated thereunder, and is
20 not intended to conflict with either the Act or the regulations. No
21 agency, board, commission, department, institution, bureau,
22 executive officer or other entity of the executive branch shall
23 exceed the minimum overtime entitlement provisions of the Fair Labor
24

1 Standards Act and regulations promulgated thereunder except as
2 herein provided.

3 B. Nothing in this title or the federal Fair Labor Standards
4 Act shall be construed to prohibit an employer from paying an
5 employee who is required to work on a holiday, as defined in Section
6 82.1 of Title 25 of the Oklahoma Statutes, for such work at a rate
7 of two times the employee's regular hourly rate, or from
8 rescheduling the holiday at the discretion of the appointing
9 authority; provided, however, any state employee who is required to
10 work on a holiday, as defined in Section 82.1 of Title 25 of the
11 Oklahoma Statutes, in the performance of fire suppression duties
12 shall receive holiday pay at a rate of two times the employee's
13 regular hourly rate.

14 ~~B.~~ C. Any employee receiving compensatory time consistent with
15 the provisions of the federal Fair Labor Standards Act shall exhaust
16 such compensatory time prior to the taking of annual leave, except
17 where the employee is subject to losing such annual leave due to the
18 application of the accumulation limits in Section 840-2.20 of this
19 title.

20 ~~C.~~ D. An employee receiving compensatory time under the
21 provisions of subsection A of this section shall be permitted to use
22 accrued compensatory time within one hundred eighty (180) days
23 following the ~~pay period in~~ day on which it was accrued, provided
24 the taking of compensatory time does not unduly impact agency

1 operations or the health, safety or welfare of the public, or
2 endanger public property. Agencies shall not be allowed to extend
3 this one-hundred-eighty-day time period for employees in an
4 institutional setting. The balance of any unused compensatory time
5 received but not taken during this time period shall be paid to the
6 employee at the employee's current regular hourly rate.

7 ~~D.~~ E. As used in this section, "institutional setting" shall
8 mean any agency or part of any agency where twenty-four-hour care,
9 monitoring or supervision is required for patients, clients or
10 inmates to protect public health, safety or property.

11 SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-2.17, as
12 last amended by Section 3, Chapter 12, O.S.L. 2009 (74 O.S. Supp.
13 2009, Section 840-2.17), is amended to read as follows:

14 Section 840-2.17. A. Unless otherwise provided by the Oklahoma
15 Constitution, language in law which authorizes the setting or fixing
16 of compensation, pay or salary of state officers and employees shall
17 not be construed to authorize any agency, board, commission,
18 department, institution, bureau, executive officer or other entity
19 of the executive branch of state government to award, grant, give,
20 authorize, or promise any officer or employee of the State of
21 Oklahoma a raise, including, but not limited to, a cost-of-living
22 raise or any other type of raise that would be given to state
23 employees on an across-the-board basis, except as herein provided.
24 Such raises are prohibited unless authorized by the Legislature and

1 by Merit System of Personnel Administration Rules promulgated by the
2 Administrator. This prohibition applies to all classified and
3 unclassified officers and employees in the executive branch of state
4 government, excluding institutions under the administrative
5 authority of the Oklahoma State Regents for Higher Education.

6 B. However, nothing in this section shall be construed to
7 prohibit the following actions if the action is made in good faith
8 and not for the purpose of circumventing subsection A of this
9 section, and if the appointing authority certifies that the action
10 can be implemented for the current fiscal year and the subsequent
11 fiscal year without the need for additional funding to increase the
12 personal services budget of the agency:

13 1. Salary advancements on promotion or direct reclassification
14 to a job family level or class with a higher salary band;

15 2. Salary adjustments resulting from a pay band change for a
16 job family level or class adopted by the Office of Personnel
17 Management;

18 3. Increases in longevity payments pursuant to Section 840-2.18
19 of this title;

20 4. Payment of overtime, special entrance rates, pay
21 differentials;

22 5. Payment of wages, salaries, or rates of pay established and
23 mandated by law;

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- 1 6. Market adjustments for job family levels tied to market
2 competitiveness;
- 3 7. Intra-agency lateral transfers, provided that the adjustment
4 does not exceed five percent (5%) and the adjustment is based on the
5 needs of the agency;
- 6 8. Skill-based adjustments. Such adjustments, which are
7 implemented before November 1, 2006, other than lump-sum payments,
8 shall become permanent after twenty-four (24) months from the date
9 such salary adjustment is implemented and may not later be removed
10 from an employee's base salary if a furlough or reduction-in-force
11 is implemented by the appointing authority granting such salary
12 adjustment. Skill-based pay adjustments, which are implemented on
13 or after November 1, 2006, and which are paid to an employee, shall
14 be paid as long as the employee remains employed in the position and
15 performs the skills for which the differential is due, but shall not
16 be included as a part of the employee's base salary;
- 17 9. Equity-based adjustments;
- 18 10. Performance-based adjustments for employees who received at
19 least a "meets standards" rating on their most current performance
20 rating;
- 21 11. Career progression increases as an employee advances
22 through job family levels; or
- 23 12. Salary adjustments not to exceed five percent (5%) for
24 probationary classified employees achieving permanent status

1 following the initial probationary period and permanent classified
2 employees successfully completing trial periods after intra-agency
3 lateral transfer or promotion to a different job family level or
4 following career progression to a different job family level.

5 C. Provided, however, any reclassification for one of the
6 purposes provided in subsection B of this section that would require
7 additional funding by the Legislature shall not be implemented
8 without approval of the Legislature.

9 D. The pay movement mechanisms described in paragraphs 6
10 through 11 in subsection B of this section shall be implemented
11 pursuant to rules promulgated by the Administrator of the Office of
12 Personnel Management for the classified service.

13 E. Appointing authorities may implement the pay movement
14 mechanisms in paragraphs 6 through 12 in subsection B of this
15 section subject to the availability of funds within the agency's
16 budget for the current fiscal year and subsequent fiscal year
17 without the need for additional funding to increase the personal
18 services budget of the agency. Failure by the appointing authority
19 to follow the provisions of this subsection may cause the withdrawal
20 of the use of the pay movement mechanisms provided in paragraphs 6,
21 7, 9, 10, and 11 of subsection B of this section within the agency
22 during the next appropriations cycle.

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1 F. The provisions in subsection B shall not apply to chief
2 executive officers of any agency, board, commission, department or
3 program except for paragraphs 3 and 5 of subsection B.

4 SECTION 4. This act shall become effective November 1, 2010.

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