

1 CORRECTED PRINTING

2 THE STATE SENATE
3 Thursday, February 11, 2010

4 Committee Substitute for
5 Senate Bill No. 1659

6 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1659 - By: Aldridge of the
7 Senate and Wright (John) of the House.

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

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

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

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

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

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

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

23 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;

1 ~~8.~~ 9. "Job" means a position or job family level in a job
2 family;

3 ~~9.~~ 10. "Job family" means:

4 a. jobs which require similar core skills and involve
5 similar work, and

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

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

17 ~~11.~~ 12. "Job family descriptor" means a written document that:

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

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

1 ~~12.~~ 13. "Promotional examination" means any employment test
2 designated by the Office of Personnel Management to determine
3 further the qualifications of a permanent classified employee of a
4 state agency for employment in a different job for which the
5 employee possesses the minimum qualifications of education,
6 experience, or licensure within that agency;

7 ~~13.~~ 14. "Interagency transfer" means an action in which an
8 employee leaves employment with one agency and enters employment
9 with another agency while continuously employed with the state;

10 ~~14.~~ 15. "Intra-agency transfer" means moving an employee from
11 one position to another position with the same agency either with or
12 without reclassification;

13 ~~15.~~ 16. "Job-related organization" means a membership
14 association which collects annual dues, conducts annual meetings and
15 provides job-related education for its members and which includes
16 state employees, including any association for which payroll
17 deductions for membership dues are authorized pursuant to paragraph
18 5 of subsection B of Section 7.10 of Title 62 of the Oklahoma
19 Statutes;

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

1 ~~17.~~ 18. "Merit Rules" or "Merit Rules for Employment" or "Merit
2 System of Personnel Administration Rules" means rules adopted by the
3 Administrator of the Office of Personnel Management or the Oklahoma
4 Merit Protection Commission pursuant to the Oklahoma Personnel Act;

5 ~~18.~~ 19. "Noncompetitive appointment" means the appointment of a
6 person to a noncompetitive job level within a job family;

7 ~~19.~~ 20. "Noncompetitive job" means an unskilled or semiskilled
8 job designated by the Office of Personnel Management as
9 noncompetitive. Noncompetitive jobs do not require written
10 examinations for placement on registers of eligibles;

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

16 ~~21.~~ 22. "Presiding official" means a person serving the
17 Oklahoma Merit Protection Commission in the capacity of
18 administrative hearing officer, mediator, or other alternative
19 dispute resolution arbitrator or facilitator;

20 ~~22.~~ 23. "Progressive discipline" means a system designed to
21 ensure the consistency, impartiality and predictability of
22 discipline and the flexibility to vary penalties if justified by
23 aggravating or mitigating conditions;

1 ~~23.~~ 24. "Reclassification" means the process of changing a
2 classified employee from one job family to another job family or
3 from one job family level to another job family level in the same
4 job family, resulting in a change in the employee's assigned job
5 code;

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

13 ~~25.~~ 26. "Regular unclassified service employee" means an
14 unclassified service employee who is not on a temporary or other
15 time-limited appointment;

16 ~~26.~~ 27. "Supervisor" means a classified or unclassified officer
17 or employee who has been assigned authority and responsibility for
18 evaluating the performance of subordinates;

19 ~~27.~~ 28. "Unclassified service" or "exempt service" means
20 employees and positions excluded from coverage of the Oklahoma Merit
21 System of Personnel Administration;

22 ~~28.~~ 29. "Merit System" means the Oklahoma Merit System of
23 Personnel Administration;

1 ~~29.~~ 30. "Administrator" means the appointing authority of the
2 Office of Personnel Management;

3 ~~30.~~ 31. "Executive Director" means the appointing authority of
4 the Oklahoma Merit Protection Commission;

5 ~~31.~~ 32. "Office" means the Office of Personnel Management;

6 ~~32.~~ 33. "Commission" means the Oklahoma Merit Protection
7 Commission;

8 ~~33.~~ 34. "Veteran" means a person who has been honorably
9 discharged from the Armed Forces of the United States and has been a
10 resident of Oklahoma for at least one (1) year prior to the date of
11 the examination; and

12 ~~34.~~ 35. "Voluntary out" means the voluntary separation of
13 employees from the state service in exchange for benefits offered by
14 an agency in order to reduce or eliminate the adverse impact of an
15 imminent reduction-in-force.

16 SECTION 2. AMENDATORY 74 O.S. 2001, Section 840-2.15, as
17 last amended by Section 1, Chapter 212, O.S.L. 2006 (74 O.S. Supp.
18 2009, Section 840-2.15), is amended to read as follows:

19 Section 840-2.15 A. The federal Fair Labor Standards Act, 29
20 U.S.C., Section 201, et seq., provides for minimum standards for
21 ~~both wages and~~ overtime entitlement, and spells out administrative
22 procedures by which covered work time must be compensated. This
23 section is not a comprehensive listing of the provisions of the Fair

1 Labor Standards Act and regulations promulgated thereunder, and is
2 not intended to conflict with either the Act or the regulations. No
3 agency, board, commission, department, institution, bureau,
4 executive officer or other entity of the executive branch shall
5 exceed the minimum overtime entitlement provisions of the Fair Labor
6 Standards Act and regulations promulgated thereunder except as
7 herein provided.

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

19 ~~B.~~ C. Any employee receiving compensatory time consistent with
20 the provisions of the federal Fair Labor Standards Act shall exhaust
21 such compensatory time prior to the taking of annual leave, except
22 where the employee is subject to losing such annual leave due to the

1 application of the accumulation limits in Section 840-2.20 of this
2 title.

3 ~~C.~~ D. An employee receiving compensatory time under the
4 provisions of subsection A of this section shall be permitted to use
5 accrued compensatory time within one hundred eighty (180) days
6 following the ~~pay period in~~ day on which it was accrued, provided
7 the taking of compensatory time does not unduly impact agency
8 operations or the health, safety or welfare of the public, or
9 endanger public property. Agencies shall not be allowed to extend
10 this one-hundred-eighty-day time period for employees in an
11 institutional setting. The balance of any unused compensatory time
12 received but not taken during this time period shall be paid to the
13 employee at the employee's current regular hourly rate.

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

18 SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-2.17, as
19 last amended by Section 3, Chapter 12, O.S.L. 2009 (74 O.S. Supp.
20 2009, Section 840-2.17), is amended to read as follows:

21 Section 840-2.17. A. Unless otherwise provided by the Oklahoma
22 Constitution, language in law which authorizes the setting or fixing
23 of compensation, pay or salary of state officers and employees shall

1 not be construed to authorize any agency, board, commission,
2 department, institution, bureau, executive officer or other entity
3 of the executive branch of state government to award, grant, give,
4 authorize, or promise any officer or employee of the State of
5 Oklahoma a raise, including, but not limited to, a cost-of-living
6 raise or any other type of raise that would be given to state
7 employees on an across-the-board basis, except as herein provided.
8 Such raises are prohibited unless authorized by the Legislature and
9 by Merit System of Personnel Administration Rules promulgated by the
10 Administrator. This prohibition applies to all classified and
11 unclassified officers and employees in the executive branch of state
12 government, excluding institutions under the administrative
13 authority of the Oklahoma State Regents for Higher Education.

14 B. However, nothing in this section shall be construed to
15 prohibit the following actions if the action is made in good faith
16 and not for the purpose of circumventing subsection A of this
17 section, and if the appointing authority certifies that the action
18 can be implemented for the current fiscal year and the subsequent
19 fiscal year without the need for additional funding to increase the
20 personal services budget of the agency:

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

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

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

6 4. Payment of overtime, special entrance rates, pay
7 differentials;

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

10 6. Market adjustments for job family levels tied to market
11 competitiveness;

12 7. Intra-agency lateral transfers, provided that the adjustment
13 does not exceed five percent (5%) and the adjustment is based on the
14 needs of the agency;

15 8. Skill-based adjustments. Such adjustments, which are
16 implemented before November 1, 2006, other than lump-sum payments,
17 shall become permanent after twenty-four (24) months from the date
18 such salary adjustment is implemented and may not later be removed
19 from an employee's base salary if a furlough or reduction-in-force
20 is implemented by the appointing authority granting such salary
21 adjustment. Skill-based pay adjustments, which are implemented on
22 or after November 1, 2006, and which are paid to an employee, shall
23 be paid as long as the employee remains employed in the position and

1 performs the skills for which the differential is due, but shall not
2 be included as a part of the employee's base salary;

3 9. Equity-based adjustments;

4 10. Performance-based adjustments for employees who received at
5 least a "meets standards" rating on their most current performance
6 rating;

7 11. Career progression increases as an employee advances
8 through job family levels; or

9 12. Salary adjustments not to exceed five percent (5%) for
10 probationary classified employees achieving permanent status
11 following the initial probationary period and permanent classified
12 employees successfully completing trial periods after intra-agency
13 lateral transfer or promotion to a different job family level or
14 following career progression to a different job family level.

15 C. Provided, however, any reclassification for one of the
16 purposes provided in subsection B of this section that would require
17 additional funding by the Legislature shall not be implemented
18 without approval of the Legislature.

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

1 E. Appointing authorities may implement the pay movement
2 mechanisms in paragraphs 6 through 12 in subsection B of this
3 section subject to the availability of funds within the agency's
4 budget for the current fiscal year and subsequent fiscal year
5 without the need for additional funding to increase the personal
6 services budget of the agency. Failure by the appointing authority
7 to follow the provisions of this subsection may cause the withdrawal
8 of the use of the pay movement mechanisms provided in paragraphs 6,
9 7, 9, 10, and 11 of subsection B of this section within the agency
10 during the next appropriations cycle.

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-8-10 -
16 DO PASS, As Amended and Coauthored.