



Compensation for overtime, if applicable, shall be one of the following:

**For FLSA Overtime:**

- Cash payment at the time and one-half rate must be paid on an employee's "regular rate" of pay, which generally includes all payments made by the employer to or on behalf of the employee. There are certain statutory exclusions outlined in Section 7(e) of the Fair Labor Standards Act. While the implementation of the Fair Labor Standards Act falls outside the purview of the Department of State Civil Service, our research suggests that premium pay, as described in Rule 6.16(a), and on-call and shift differential, as defined in Rule 6.28, are included in the regular rate calculation. State agencies are responsible for calculating overtime for their employees and should consult the [U.S. Department of Labor](#) when questions arise.
- Compensatory leave earned at the time and one-half rate.

NOTE: An agency that chooses to compensate FLSA overtime with compensatory leave in lieu of cash payment must be able to show, for employees hired after April 15, 1986, that the employee has agreed to the compensatory leave form of compensation. This can be done through a collective bargaining agreement, memorandum of understanding, or any other agreement between the agency and representatives of the employee, or it can be done through an agreement arrived at between the agency and the employee before the performance of the work. An easy way to do this is to obtain a signed agreement from the employee at the time the employee is hired and signs his paperwork. A sample agreement form that can be used is available [HERE](#).

**For State Overtime, several options exist:**

- Compensation (cash payment or compensatory leave) at the time and one-half rate may be granted IF:
  - The non-exempt employee works overtime on a holiday;  
**OR**
  - The Commission has granted an exception allowing the agency to compensate exempt and/or non-exempt employees at the time and one-half rate;  
**OR**
  - The exempt or non-exempt employee has worked during an official office closure due to an emergency situation and the overtime does not qualify as FLSA overtime.  
**OR**
  - The exempt or non-exempt employee has worked during a disaster, emergency, or health pandemic declared by the Governor.
- Cash payment at the regular rate. When calculating the employee's hourly rate of pay for State overtime, include base supplement. HOWEVER, other pay (premium pay, shift differential and non-cash compensation such as the reasonable cost or fair value of goods and/or facilities) shall not be included in calculating rate of pay for State Overtime purposes.

- Compensatory leave earned at the hour-for-hour rate.
- No overtime compensation is an option for EXEMPT employees only.