

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: _____

LONG TITLE

General Description:

This bill addresses overtime pay for certain state 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; 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:

63A-17-502, as last amended by Laws of Utah 2022, Chapter 447

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



26 Section 1. Section **63A-17-502** is amended to read:

27 **63A-17-502. Overtime policies for state employees.**

28 (1) As used in this section:

29 (a) "Accrued overtime hours" means:

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

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

35 (b) "Appointed official" means:

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

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

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

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

42 (c) "Department" means, except as otherwise provided in this section, the Department
43 of Government Operations, the Department of Corrections, the Department of Financial
44 Institutions, the Department of Alcoholic Beverage Services, the Insurance Department, the
45 Public Service Commission, the Labor Commission, the Department of Agriculture and Food,
46 the Department of Human Services, the Department of Natural Resources, the Department of
47 Transportation, the Department of Commerce, the Department of Workforce Services, the State
48 Tax Commission, the Department of Cultural and Community Engagement, the Department of
49 Health, the National Guard, the Department of Environmental Quality, the Department of
50 Public Safety, the Commission on Criminal and Juvenile Justice, all merit employees except
51 attorneys in the Office of the Attorney General, merit employees in the Office of the State
52 Treasurer, merit employees in the Office of the State Auditor, Department of Veterans and
53 Military Affairs, and the Board of Pardons and Parole.

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

56 (e) "Exempt employee" means a state employee who is exempt as defined by the [Fair

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

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

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

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

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

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

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

69 (i) an appointed official;

70 (ii) an elected official; or

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

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

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

76 [~~(i) for all nonexempt employees, except law enforcement and hospital employees, a~~
77 ~~consecutive seven day 24 hour work period of 40 hours;]~~

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

79 [~~(iii) for nonexempt law enforcement and hospital employees, the period established by~~
80 ~~each department by rule for those employees according to the requirements of the Fair Labor~~
81 ~~Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.]~~

82 (m) "Work period" means:

83 (i) for a nonexempt employee, except a nonexempt law enforcement or hospital
84 employee, a consecutive seven day, 24 hour work period of 40 hours;

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

86 (iii) for a nonexempt hospital employee, the period the division establishes by rule
87 according to the requirements of the FLSA; or

88 (iv) for a nonexempt law enforcement employee:

89 (A) who is employed by the Department of Natural Resources, the period the division
90 establishes by rule according to the requirements of the FLSA; or

91 (B) who is employed by a department other than the Department of Natural Resources,
92 the period the division establishes by rule in accordance with Subsection (2).

93 (2) Except for the Department of Natural Resources, the division shall require each
94 department employing a nonexempt law enforcement employee to designate one of the
95 following work periods applicable to that employee:

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

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

98 ~~[(2)]~~ (3) Each department shall compensate each state employee who works overtime
99 by complying with the requirements of this section.

100 ~~[(3)]~~ (4) (a) Each department shall negotiate and obtain a signed FLSA agreement from
101 each nonexempt employee.

102 (b) In the FLSA agreement, the nonexempt employee shall elect either to be
103 compensated for overtime by:

104 (i) taking time off work at the rate of one and one-half hour off for each overtime hour
105 worked; or

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

108 (c) ~~Any~~ A nonexempt employee who elects to take time off under this Subsection
109 ~~[(3)]~~ (4) shall be paid for any overtime worked in excess of the cap established by the division.

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

112 (e) Each department shall:

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

115 (ii) for ~~employees who elect~~ an employee who elects to be paid for overtime worked,
116 pay them for overtime worked in the paycheck for the pay period in which the employee
117 worked the overtime.

118 (f) If a department pays a nonexempt employee for overtime, that department shall

119 charge that payment to that department's budget.

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

123 ~~[(4)]~~ (5) (a) (i) Except as provided in Subsection ~~[(4)(a)(ii)]~~ (5)(a)(ii), each department
124 shall compensate ~~[exempt employees who work]~~ each exempt employee who works overtime
125 by granting ~~[them]~~ the employee time off at the rate of one hour off for each hour of overtime
126 worked.

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

131 (b) (i) Each department shall:

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

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

135 (ii) If any department fails to establish a uniform annual date as required by this
136 Subsection ~~[(4)]~~ (5), the director of the division, in conjunction with the director of the
137 Division of Finance, shall establish the date for that department.

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

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

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

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

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

149 (ii) unless authorized by the director of the division under Subsection ~~[(4)(a)(ii)]~~

150 (5)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by
151 paying the employee for the overtime or by granting the employee time off for the lapsed
152 overtime.

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

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

158 ~~[(5)]~~ (6) The division shall:

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

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

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

166 (i) establishing procedures for recording overtime worked that comply with FLSA
167 requirements;

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

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

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

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

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

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

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

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

184 ~~[(6)]~~ (7) (a) In coordination with the procedures for recording overtime worked
185 established in rule by the division, the Division of Finance shall modify its payroll and human
186 resource systems to accommodate those procedures.

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

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

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

197 Section 2. **Effective date.**

198 This bill takes effect on July 1, 2024.