

1                   **LAW ENFORCEMENT EMPLOYEE OVERTIME AMENDMENTS**  
2024 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Karianne Lisonbee**  
Senate Sponsor: Derrin R. Owens

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3 **LONG TITLE**

4 **General Description:**

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

6 **Highlighted Provisions:**

7       This bill:

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

15 **Money Appropriated in this Bill:**

16       None

17 **Other Special Clauses:**

18       This bill provides a special effective date.

19 **Utah Code Sections Affected:**

20 AMENDS:

21       **63A-17-502**, as last amended by Laws of Utah 2022, Chapter 447

22 ENACTS:

23       **10-3-1109.5**, Utah Code Annotated 1953

24       **17-33-11.7**, Utah Code Annotated 1953

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

27       Section 1. Section **10-3-1109.5** is enacted to read:

28 **10-3-1109.5 . Overtime for law enforcement personnel.**

29 (1) As used in this section:

- 30 (a) "Nonexempt employee" means a municipal employee who is nonexempt under the  
 31 requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.  
 32 (b) "Overtime" means hours worked in excess of a nonexempt employee's work period.  
 33 (c) "Regular hourly rate" means the hourly rate of pay a nonexempt employee receives  
 34 for hours worked during a work period.  
 35 (d) "Work period" means the maximum number of hours, within a specified number of  
 36 consecutive days, that a nonexempt employee may work before the nonexempt  
 37 employee is compensated for overtime.

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

- 41 (a) designates a work period for the nonexempt employee that is the same as, or  
 42 equivalent to, a work period described in Subsection 63A-17-502(2); and  
 43 (b) compensates the nonexempt employee for overtime at a rate of one and one-half  
 44 times the nonexempt employee's regular hourly rate.

45 Section 2. Section 17-33-11.7 is enacted to read:

46 **17-33-11.7 . Overtime for law enforcement personnel -- Exception.**

47 (1) As used in this section:

- 48 (a) "Nonexempt employee" means an county employee who is nonexempt under the  
 49 requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.  
 50 (b) "Overtime" means hours worked in excess of a nonexempt employee's work period.  
 51 (c) "Regular hourly rate" means the hourly rate of pay a nonexempt employee receives  
 52 for hours worked during a work period.  
 53 (d) "Work period" means the maximum number of hours, within a specified number of  
 54 consecutive days, that a nonexempt employee may work before the nonexempt  
 55 employee is compensated for overtime.

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

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

- 61 (a) designates a work period for the nonexempt employee that is the same as, or

62 equivalent to, a work period described in Subsection 63A-17-502(2); and  
63 (b) compensates the nonexempt employee for overtime at a rate of one and one-half  
64 times the nonexempt employee's regular hourly rate.

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

66 **63A-17-502 . Overtime policies for state employees.**

67 (1) As used in this section:

68 (a) "Accrued overtime hours" means:

- 69 (i) for a nonexempt [employees] employee, overtime hours earned during a fiscal year  
70 that, at the end of the fiscal year, have not been paid and have not been taken as  
71 time off by the nonexempt state employee who accrued them; and  
72 (ii) for an exempt [employees] employee, overtime hours earned during an overtime  
73 year.

74 (b) "Appointed official" means:

- 75 (i) each department executive director and deputy director, each division director, and  
76 each member of a board or commission; and  
77 (ii) any other person employed by a department who is appointed by, or whose  
78 appointment is required by law to be approved by, the governor and who:  
79 (A) is paid a salary by the state; and  
80 (B) who exercises managerial, policy-making, or advisory responsibility.

81 (c) "Department" means, except as otherwise provided in this section, the Department of  
82 Government Operations, the Department of Corrections, the Department of Financial  
83 Institutions, the Department of Alcoholic Beverage Services, the Insurance  
84 Department, the Public Service Commission, the Labor Commission, the Department  
85 of Agriculture and Food, the Department of Human Services, the Department of  
86 Natural Resources, the Department of Transportation, the Department of Commerce,  
87 the Department of Workforce Services, the State Tax Commission, the Department of  
88 Cultural and Community Engagement, the Department of Health, the National Guard,  
89 the Department of Environmental Quality, the Department of Public Safety, the  
90 Commission on Criminal and Juvenile Justice, all merit employees except attorneys  
91 in the Office of the Attorney General, merit employees in the Office of the State  
92 Treasurer, merit employees in the Office of the State Auditor, Department of  
93 Veterans and Military Affairs, and the Board of Pardons and Parole.

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

- 96 (e) "Exempt employee" means a state employee who is exempt as defined by the [~~Fair~~  
 97 ~~Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq]~~ FLSA.
- 98 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.
- 99 (g) "FLSA agreement" means the agreement authorized by the [~~Fair Labor Standards~~  
 100 ~~Act of 1978, 29 U.S.C. Sec. 201 et seq.,]~~ FLSA by which a nonexempt employee  
 101 elects the form of compensation the nonexempt employee will receive for overtime.
- 102 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by the  
 103 division applying FLSA requirements.
- 104 (i) "Overtime" means actual time worked in excess of [~~the~~] an employee's defined work  
 105 period.
- 106 (j) "Overtime year" means the year determined by a department under Subsection [~~(4)(b)~~]  
 107 (5)(b) at the end of which an exempt employee's accrued overtime lapses.
- 108 (k) "State employee" means every person employed by a department who is not:  
 109 (i) an appointed official;  
 110 (ii) an elected official; or  
 111 (iii) a member of a board or commission who is paid only for per diem or travel  
 112 expenses.
- 113 (l) "Uniform annual date" means the date when an exempt employee's accrued overtime  
 114 lapses.
- 115 [~~(m) "Work period" means:~~  
 116 ~~(i) for all nonexempt employees, except law enforcement and hospital employees, a~~  
 117 ~~consecutive seven day 24 hour work period of 40 hours;]~~  
 118 ~~(ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and]~~  
 119 ~~(iii) for nonexempt law enforcement and hospital employees, the period established by~~  
 120 ~~each department by rule for those employees according to the requirements of the~~  
 121 ~~Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.]~~
- 122 (m) "Work period" means:  
 123 (i) for a nonexempt employee, except a nonexempt law enforcement or hospital  
 124 employee, a consecutive seven day, 24 hour work period of 40 hours;  
 125 (ii) for an exempt employee, a 14 day, 80 hour payroll cycle;  
 126 (iii) for a nonexempt hospital employee, the period the division establishes by rule  
 127 according to the requirements of the FLSA; or  
 128 (iv) for a nonexempt law enforcement employee as defined in the FLSA:  
 129 (A) who is employed by the Department of Natural Resources, the period the

130 division establishes by rule according to the requirements of the FLSA; or  
131 (B) who is employed by a department other than the Department of Natural  
132 Resources, the period the division establishes by rule in accordance with  
133 Subsection (2).

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

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

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

139 [~~(2)~~] (3) Each department shall compensate each state employee who works overtime by  
140 complying with the requirements of this section.

141 [~~(3)~~] (4) (a) Each department shall negotiate and obtain a signed FLSA agreement from  
142 each nonexempt employee.

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

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

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

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

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

154 (e) Each department shall:

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

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

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

162 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued  
163 overtime hours for nonexempt employees and charge that total against the

- 164 appropriate fund or subfund.
- 165 ~~[(4)]~~ (5) (a) (i) Except as provided in Subsection ~~[(4)(a)(ii)]~~ (5)(a)(ii), each department  
 166 shall compensate ~~[exempt employees who work]~~ each exempt employee who works  
 167 overtime by granting ~~[them]~~ the employee time off at the rate of one hour off for  
 168 each hour of overtime worked.
- 169 (ii) The director of the division may grant limited exceptions to this requirement,  
 170 where work circumstances dictate, by authorizing a department to pay ~~[employees]~~  
 171 an employee for overtime worked at the rate per hour that the employee receives  
 172 for nonovertime work, if that department has funds available.
- 173 (b) (i) Each department shall:
- 174 (A) establish in its written human resource policies a uniform annual date for each  
 175 division that is at the end of any pay period; and
- 176 (B) communicate the uniform annual date to its employees.
- 177 (ii) If any department fails to establish a uniform annual date as required by this  
 178 Subsection ~~[(4)]~~ (5), the director of the division, in conjunction with the director of  
 179 the Division of Finance, shall establish the date for that department.
- 180 ~~[(e) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a~~  
 181 ~~benefit, and is not a vested right.]~~
- 182 ~~[(ii) A court may not construe the overtime for exempt employees authorized by this~~  
 183 ~~Subsection (4) as an entitlement, a benefit, or as a vested right.]~~
- 184 ~~[(d)]~~ (c) The overtime authorized for an exempt employee under this Subsection (5) is  
 185 not an entitlement, a benefit, or a vested right.
- 186 (d) At the end of the overtime year, upon transfer to another department at any time, and  
 187 upon termination, retirement, or other situations where the employee will not return  
 188 to work before the end of the overtime year:
- 189 (i) any of an exempt employee's overtime that is more than the maximum established  
 190 by division rule lapses; and
- 191 (ii) unless authorized by the director of the division under Subsection ~~[(4)(a)(ii)]~~  
 192 (5)(a)(ii), a department may not compensate the exempt employee for that lapsed  
 193 overtime by paying the employee for the overtime or by granting the employee  
 194 time off for the lapsed overtime.
- 195 (e) Before working any overtime, each exempt employee shall obtain authorization to  
 196 work overtime from the exempt employee's immediate supervisor.
- 197 (f) If a department pays an exempt employee for overtime under authorization from the

- 198 director of the division, that department shall charge that payment to that  
199 department's budget in the pay period earned.
- 200 [~~(5)~~] (6) The division shall:
- 201 (a) ensure that the provisions of the FLSA and this section are implemented throughout  
202 state government;
- 203 (b) determine, for each state employee, whether [~~that~~] the employee is exempt,  
204 nonexempt, law enforcement, or has some other status under the FLSA;
- 205 (c) in coordination with modifications to the systems operated by the Division of  
206 Finance, make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
207 Rulemaking Act:
- 208 (i) establishing procedures for recording overtime worked that comply with FLSA  
209 requirements;
- 210 (ii) establishing requirements governing overtime worked while traveling and  
211 procedures for recording that overtime that comply with FLSA requirements;
- 212 (iii) establishing requirements governing overtime worked if the employee is "on  
213 call" and procedures for recording that overtime that comply with FLSA  
214 requirements;
- 215 (iv) establishing requirements governing overtime worked while an employee is  
216 being trained and procedures for recording that overtime that comply with FLSA  
217 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  
220 pay the 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~~]  
224 an 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  
230 and human 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~~]  
233 an employee who is aggrieved by the FLSA designation made by the division as  
234 required by this section may appeal that determination to the director of the division  
235 by following the 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,  
240 according to the procedures and requirements of federal law.

241 Section 4. **Effective date.**

242 This bill takes effect on July 1, 2024.