



USDA Forest Service Fire and Aviation Management Briefing Paper



Date: October 2, 2005

Topic: Application of overtime regulations

Issue: Exempt employees who are at a pay rate greater than GS-10 step 1 responding to non-fire emergencies who are assigned to exempt positions do not receive full time and one half pay for overtime hours worked.

Background: Prior to January 2001, FLSA-exempt employees who worked in exempt positions when responding to wildland fires were subject to the overtime pay provisions of the Fair Labor Standards Act of 1938 which limited overtime pay to 1 ½ the basic pay rate up to the overtime pay rate of a GS-10 step 1. In 2000, Public Law 106-558 Firefighter Pay Reform Act amended 5 U.S.C 5542 (a) to allow full overtime to be paid to wildland firefighters of the Department of Interior and Forest Service beginning January 20, 2001. This authority applies **only** when wildland firefighters are engaged in wildland fire suppression activities.

Key Points:

Non-exempt employees: Overtime rate of 1 ½ the basic rate of pay is paid for all work over 8 hours per day or 40 hours per week regardless of the work the employee is performing.

Exempt employees:

- **Non fire suppression work:** Overtime pay for employees who are not covered by the Fair Labor Standards Act (FLSA-exempt) generally is earned for hours of work in excess of 8 hours per day or 40 hours per week. For employees with pay rates equal to or less than the pay rate of a GS-10 step 1 full time and ½ is received for overtime worked. For employees with pay rates greater than a GS-10 step 1, the overtime rate is the greater of a GS-10 step 1 pay rate x 1.5 or the employee's hourly rate of pay.
- **Exempt employees assigned to non-exempt positions:** Exempt employees who are assigned to non-fire emergency incidents and perform nonexempt work for more than 20% of their work hours in any weekly tour of duty are entitled to be paid under the Fair Labor Standards Act, 5 CFR 551.208 (d). (i.e. receive overtime at a rate of 1 ½ times their basic rate of pay).
- **Wildland Fire Suppression assignments:** Wildland firefighters who are exempt from the FLSA overtime pay provisions, and are employees of the Department of Interior or Forest Service receive an overtime pay rate of 1 ½ their basic rate of pay while they are engaged in **fire suppression activities only**.

Bi-weekly pay limitations: Bi-weekly pay limitations apply to all employees. This limitation is waived for employees responding to wildland fire suppression activities. It can also be waived by the Department for Presidential declared emergencies at which time employees are paid under the annual limitation not to exceed the rate for a GS -15 Step 10 or Level V of the Executive Schedule, whichever is greater. Annual pay limitations still apply. There is no provision in law for waiving any salary payment received by an employee that exceeds the annual maximum earning limit.

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