POINT PAPER

SUBJECT: Overtime During the DoD Administrative Furlough

PURPOSE: To discuss the effects of granting overtime during a period of administrative furlough.

SUMMARY:

- An “administrative furlough” is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse of appropriation.

- Any additional hours of officially ordered or approved work within the administrative workweek needed to accomplish the mission is overtime work.

- Employees who are required to work hours outside of a basic workweek during which they have been furloughed are compensated with their rate of basic pay if overtime thresholds have not been met, and/or with overtime pay or compensatory time off in lieu of overtime pay, as appropriate, once the threshold have been met.
    - Most employees are subject to a 40-hour weekly overtime threshold and an 8-hour daily overtime threshold. For example, if an employee is ordered to work 8 additional hours outside the basic workweek, these hours are substituted for the 8 furlough hours, and in essence the employee has worked a regular 40-hour workweek.

OVERTIME REGULATIONS:

- Overtime pay provided under title 5 USC is pay for hours of work officially ordered or approved in excess of 8 hours in a day or 40 hours in an administrative workweek.
    - FLSA exempt employees who work full-time, part-time, or intermittent tours of duty are eligible for title 5 overtime pay. Employees in SL and ST positions are covered by the premium pay provisions under title 5.
    - For employees with rates of basic pay equal to or less than the rate of basic pay for GS-10, step 1, the overtime hourly rate is the employee's hourly rate of basic pay multiplied by 1.5. For employees with rates of basic pay greater than the basic pay for GS-10, step 1, the overtime hourly rate is the greater of: the hourly rate of basic pay for GS-10, step 1, multiplied by 1.5, or the employee's hourly rate of basic pay.
- Overtime pay for nonexempt employees is computed under the Fair Labor Standards Act (FLSA). A non-exempt employee is compensated for all hours of work in excess of 8 in a day or 40 in a workweek. All overtime work that is ordered or approved or "suffered or permitted" must be compensated.

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    - Under the FLSA, overtime pay is determined by multiplying the employee's "straight time rate of pay" by all overtime hours worked PLUS one-half of the employee's "hourly regular rate of pay" times all overtime hours worked.
    - Any applicable special rate supplement or locality payment is included in the "total remuneration" and "straight time rate of pay" when computing overtime pay under the FLSA (ex. Sunday premium pay, night pay)
- Compensatory time off is merely an alternative form of payment for overtime work. As such, the value of an hour of compensatory time off is equal to the overtime hourly rate that is payable in dollars.
    - Compensatory time off may be approved in lieu of overtime pay for irregular or occasional overtime work for both FLSA exempt and nonexempt employees. Compensatory time off can also be approved for a prevailing rate employee, but there is no authority to require that any prevailing rate (wage) employee be compensated for irregular or occasional overtime work by granting comp time off.
    - An employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned. If the accrued comp time is not used within this timeframe, the employee is paid for the earned comp time off at the overtime rate in effect when earned.

BACKGROUND:

- OMB Memorandum, “Planning for Uncertainty with Respects to Fiscal Year 2013 Budgetary Resources”, DT. January 14, 2013, provides notice and guidance to federal agencies on reducing budgetary resources.
    - Presidential sequestration order on March 1, 2013 cancels approximately $85 billion in budgetary resources across the federal government.

- OSD Memorandum, “Preparations for Potential Sequestration on March 1 and Furlough Notifications”, DT. February 20, 2013, provides notice and guidance to DoD components on reducing budgetary resources.
    - Congress was notified that DoD would place vast majority of its civilian workforce on administrative furlough during sequestration.

- Presidential Order, “Sequestration Order for Fiscal Year 2013 Pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act”, DT. March 1, 2013, orders budgetary resources in each non-exempt budget account be reduced by the amount calculated by OPM in its report to the Congress of March 1, 2013.

- 5 U.S.C. § 7106, provides management the right to administer their budgets and assign work in the interests of the government.

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    - Assigning work during a furlough period in the interests of the employee should be prohibited.
- Overtime (5 CFR 550.112(d)):
    - An employee's hours of work outside of his basic workweek, but occurring in the same administrative workweek as furlough hours, must be substituted for furlough hours in pay computations (as long as the hours of work outside the basic workweek do not qualify for an overtime rate on the basis of exceeding 40 hours in a workweek.)
    - An employee's hours of work outside of his daily tour of duty, but in the same workday as furlough hours, must be substituted for furlough hours in pay computations. Those hours are paid for at the rate applicable to the employee's daily tour of duty.

REFERENCE:
OPM's Guidance for Administrative Furloughs:
http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-administrative-furloughs.pdf

OPM's Supplemental Guidance for Sequestration and Administrative Furloughs:
http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/supplemental-guidance-administrative-furloughs.pdf

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