

CHAPTER 16

GOVERNMENT - STATE

HOUSE BILL 93-1008

BY REPRESENTATIVES Thiebaut, Eisenach, Greenwood, Hagedorn, Snyder, and Tanner;
also SENATOR Hopper.

AN ACT

CONCERNING OVERTIME WORK OF EMPLOYEES IN THE STATE PERSONNEL SYSTEM AND, IN CONNECTION THEREWITH, REQUIRING THE STATE PERSONNEL DIRECTOR TO ADOPT PROCEDURES INSURING THAT THE STATE PERSONNEL SYSTEM IS IN COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 24-30-202 (18) (a), (18) (b), (18) (c), (18) (d), (18) (e), (18) (g), and (18) (i), Colorado Revised Statutes, 1988 Repl. Vol., are repealed as follows:

24-30-202. Procedures - vouchers and warrants - rules - penalties.
(18) (a) ~~Work in excess of forty hours during the consecutive seven-day work period shall constitute overtime work. The prescribed workweek shall begin at 12:01 a.m. Saturday and shall terminate at 12 midnight Friday. Any other workweek shall be specifically approved by the controller and reported to the affected employees. Overtime shall accrue only for time in excess of forty hours during the workweek. The controller may approve exceptions to the consecutive seven-day work period and forty-hour limitation for law enforcement, fire protection, and hospital employees.~~

(b) ~~Employees whose regularly scheduled workweek includes Sunday shall not be compensated for work on that day on an overtime basis unless such work hours exceed forty hours during the workweek.~~

(c) ~~A holiday or period of authorized leave of absence falling within a regularly scheduled workweek shall be counted as working time in determining overtime work.~~

(d) ~~Work time is time an employee is required to be on duty, on state premises, or at a prescribed workplace. The state and the employee may agree to exclude up to eight hours' sleep time per day and reasonable time for meal periods when an employee is required to be on duty for a period equal to or in excess of twenty-four hours. Travel to and from the employee's regularly assigned workplace is not work~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

time:

(e) (I) ~~Except for those employees specified in subparagraph (H) of this paragraph (e), all employees who are required to work overtime shall receive compensation, either in cash or in compensatory time, at the rate of one and one-half times the regular rate or one and one-half hours for such overtime hours worked. Such compensatory time shall be taken or paid for in cash within two months after the end of the payroll period in which the overtime was worked. A nonexempt employee may accumulate up to forty hours of overtime (forty times one and one-half equals sixty hours) equating to sixty hours of compensatory time at any given point in time. Compensatory time taken by the employee shall be by mutual agreement between the employee and the employer. Any overtime worked in excess of this amount of accumulated overtime hours shall be paid in cash.~~

(II) ~~Employees holding professional, executive, outside sales, or administrative positions, upon recommendation of the department of personnel or its designee for employees within the state personnel system or the employing authority for all other employees of the state as being excluded from receiving overtime compensation, may be designated by the controller's fiscal rules to be ineligible to receive cash overtime compensation. However, in unusual circumstances, the executive director of any department within the state personnel system or his designee or the employing authority for all other employees of the state or his designee may authorize compensatory time off.~~

(g) ~~Overtime work shall be authorized by the administrative head of a department, institution, or agency only in the following cases:~~

(I) ~~When essential services cannot be provided by rescheduling hours of work or by overlapping work shifts;~~

(II) ~~When a station or assignment must be manned and another employee is not available for the work;~~

(III) ~~In short-range assignments where the use of regular employees is deemed more advantageous than the hiring of additional personnel; and~~

(IV) ~~In the event of fire, flood, catastrophe, or other unforeseen happening.~~

(i) ~~If, on the written request of any agency or institution, the controller finds that provisions of this subsection (18) provide any unusual hardship on the effective administration of such agency or institution, including recurring seasonal work load fluctuations, he may approve changes in working hours, eligibility to receive overtime compensation, and time limits under which compensatory time may be accrued and taken.~~

SECTION 2. 24-50-143 (1), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-50-143 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-50-143. Establishment and administration of overtime rules - appeals - election of remedies. (1) The state personnel director shall establish rules regarding

the eligibility of positions in the state personnel system to receive compensation for overtime. ~~pursuant to section 24-30-202 (18).~~

(3) THE STATE PERSONNEL DIRECTOR SHALL ADOPT SUCH PROCEDURES AS MAY BE NECESSARY TO INSURE THAT THE STATE PERSONNEL SYSTEM IS IN FULL COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED. SUCH PROCEDURES SHALL, CONSISTENT WITH SUCH ACT, INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(a) A DEFINITION OF THE STANDARD WORKWEEK FOR EMPLOYEES IN THE STATE PERSONNEL SYSTEM;

(b) GUIDELINES FOR DETERMINING THE ELIGIBILITY OF SUCH EMPLOYEES FOR OVERTIME COMPENSATION IN EITHER CASH OR IN COMPENSATORY TIME;

(c) GUIDELINES FOR EXEMPTING EXECUTIVE, OUTSIDE SALES, PROFESSIONAL, AND ADMINISTRATIVE EMPLOYEES FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED;

(d) TIME LIMITS UNDER WHICH COMPENSATORY TIME MAY BE ACCRUED AND TAKEN; AND

(e) GUIDELINES FOR APPROVING CHANGES REQUESTED BY ANY AGENCY OR INSTITUTION IN WORKING HOURS, ELIGIBILITY TO RECEIVE OVERTIME COMPENSATION, AND TIME LIMITS UNDER WHICH COMPENSATORY TIME MAY BE ACCRUED AND TAKEN IN ORDER TO AVOID UNUSUAL HARDSHIP ON THE EFFECTIVE ADMINISTRATION OF SUCH AGENCY OR INSTITUTION.

SECTION 3. Effective date. This act shall take effect July 1, 1993.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 18, 1993