Hours of Work Q&A
Questions & Answers
Updated 6/24/2010

Overtime-eligible/Overtime-exempt

1. What is the effect of this bill on salaried, overtime-exempt employees?
Most employees exempt from overtime under the Fair Labor Standards Act lose the exemption and are considered eligible for overtime in any workweek that contains time off due to a budget-related temporary layoff.

2. What overtime-exempt employees would not lose the exemption for a workweek in which there is a temporary layoff?
There are three categories of employees that remain exempt from overtime under all circumstances, even during a temporary layoff week – lawyers, doctors, and teachers. These three professions are "categorically exempt," meaning that individuals actually engaged in the practice of these professions are never eligible for overtime.

3. What if an overtime-exempt employee works on a temporary layoff day?
Any overtime-exempt employee, other than the categorically exempt professionals, who performs work, including working at home, on-line, on the phone, or on a BlackBerry, on a temporary layoff day must be paid the straight time rate for any hours worked up to forty, and must be paid time and a half for any hours over forty for that workweek. Thus, it is critical that this issue be watched closely and overtime-exempt employees directed not to perform any work of any kind beyond the hours scheduled for the workweek which contains a temporary layoff day or days.

4. Must employees be notified of the change in their status from overtime-exempt to overtime-eligible?
For non-represented employees - Employers must inform employees of whether or not their positions are eligible to receive overtime, including any subsequent change to their eligibility for overtime compensation (WAC 357-28-250).

For represented employees – Employers will need to consult the applicable CBA to determine what, if any, notice provisions apply.

5. Must employers receive approval from the DOP Director to return positions back to their original overtime-exempt status after the temporary layoff period?
No, since the change is due to the temporary layoff DOP will not require employers to receive approval to return the position to overtime-exempt status.

6. When an employee becomes overtime-eligible during the week of a temporary layoff, must the employee complete a time and attendance report for that week?
Yes, the employee must complete the time and attendance report only for the work week in which the temporary layoff occurred. An exception to this would be if an employee is on a 9/80 schedule and the temporary layoff day occurs on the day the employee's work week splits four hours into the shift. The employee would be OT eligible for both weeks of the 9/80 schedule because the temporary layoff spans two work weeks (see question #7 below).

7. What is the impact to an OT exempt employee on 9/80 schedule when the temporary layoff day occurs on the day the employee's work week splits four hours into the shift?
For example, if an **OT exempt employee** works the following schedule with a **work week of Monday, 12:01 p.m. through Monday, 12:00 p.m.**

July 5	**July 6**	**July 7**	**July 8**	**July 9**
9 hours (Holiday)	0 hours (scheduled day off)	9 hours	9 hours	9 hours
July 12	**July 13**	**July 14**	**July 15**	**July 16**
8 hours of temporary layoff* (*work week splits 4 hours into shift, e.g. 12:00pm)	9 hours	9 hours	9 hours	9 hours

The employee would be OT eligible for both weeks of the 9/80 schedule because the temporary layoff spans two work weeks - the work week starting on July 5 at 12:01 p.m. and the work week starting at 12:01 p.m. on July 12.

8. Must an employee receive supervisory approval to work outside their scheduled hours during the week in which a temporary layoff occurs?
Agency policy and/or collective bargaining agreement should be consulted regarding what approval is required for an employee to work outside their scheduled hours, including during the week in which a temporary layoff occurs. For non-represented employees, we recommend agency policy require prior supervisory approval any time an employee performs work outside of his/her scheduled work hours.

9. What happens if an employee who is temporarily laid off for one day has to work extra hours in the same work week as the temporary layoff?
For non-represented employees, if the employee works extra hours on one or more days in the same work week as a temporary layoff day, the employer should adjust the employee's work schedule to maintain the **total** scheduled hours for the work week. If adjusting the employee's schedule is not possible, the employer must ensure the employee is compensated for all hours worked. This can be accomplished by reducing the number of leave without pay hours for that week(see next question for instruction on how to do this). Keep in mind that reducing the employee's leave without pay hours will affect the agency's cost savings.

Examples for non-represented:
An employee is scheduled to work Mon-Fri, 8 am - 5 pm (40 hours per week). The temporary layoff day falls on Monday. On Tuesday, the employee works eight hours. Due to a critical work assignment on Wednesday, the employee is directed to work 10 hours. At this point, the supervisor should adjust the employee's hours for Thursday and/or Friday so the employee will maintain 32 paid hours for that week.

An employee is scheduled to work Mon-Fri, 8 am - 5 pm (40 hours per week). The temporary layoff day falls on Monday. The employee works eight hours on Tuesday, Wednesday, and Thursday. Due to a critical work assignment on Friday, the employee is directed to work 10 hours. Since this occurs at the end of the work week and the employee's hours cannot be adjusted, the employer must reduce the number of hours of leave without pay to six hours instead of eight hours.

For represented employees - You should consult the appropriate collective bargaining agreement regarding provisions for adjusting an employee's work schedule within the work week.

10. How would we change the leave without pay hours entered for the Temporary Layoff after they have been entered?
If the Temporary Layoff absence type and hours were entered through CATS or Interface 1, access the employee to be changed in CATS, change the hours previously entered, and save the entry. Run ZCAT6 to transfer the change.

If the Temporary Layoff absence type and hours were entered through the PA71 Quick Entry Process, access PA2001 for the employee. Select the pencil icon, change the hours previously entered, and save the entry.

Overtime calculation

11. During a week of temporary layoff, how will overtime be calculated?
Any hours worked up to forty must be paid at straight time. Hours worked over forty must be paid at the overtime rate which will be calculated in the same manner it is normally calculated - one and one-half times the employee's regular rate.

Standby/Call Back

12. Can an employee be on standby during a temporary layoff?
No, an employee who is on temporary layoff should not be placed on standby during the temporary layoff.

13. If an employee is on temporary layoff, can the employee be called back to work in an emergency?
Yes, the employer would have to verbally rescind the layoff notice. Depending on the circumstances, the employee may be entitled to callback pay as provided in WAC 357-28-185 or the applicable CBA article.

H1B Visa

14. What impact does the bill have on employees working under an H1B visa?
If there is a change in the employment circumstances of an employee working in this country under an H1B visa, the employer must immediately inform the United States Customs and Immigration Service of the changes in the terms and conditions of employment, which may affect eligibility. Also, under federal law, if the H1B employee is not performing work and is in a nonproductive status due to a decision by the employer, the employer remains obligated to pay the salaried employee the full amount of the weekly salary. 20 C.F.R. § 655.731(c)(7)(i). Any employer with employees working under an H1B visa should contact their Labor and Personnel Assistant Attorney General for further guidance and counsel.