



NEWS Bulletin

Department of Labor subpoenas FPS

On Friday, July 11th, DFPS notified staff in CPS Investigations that the agency received an administrative subpoena from the US Department of Labor, Wage & Hour Division. As a result, DFPS is required to “identify and preserve any information relating to the hours worked (particularly unscheduled hours worked) by the following specific categories of CPS case-workers for the time period June 1, 2008 to the present: CPS Investigator II; CPS Investigator III; CPS Investigator IV; CPS Investigator V; CPS Senior Investigator”

While the Department of Labor investigation is developing, it will hopefully bring to light the crisis that has been felt on the frontlines of the agency. High caseloads, pressure to close cases, and mandatory weekend work make a hard job even more difficult. These fundamental problems all stem from the agency being understaffed. Other factors, such as shuffling positions, constantly increasing documentation requirements and shrinking time requirements have also contributed to the crisis in DFPS.

Whether or not the Department of Labor action prompts changes in the policies and practices at DFPS, we will still have to push state leaders to support quality state services. Nearly all the ideas for addressing the predicted \$18 Billion budget hole involve cutting services for clients and compensation for employees. The crisis currently being felt on the frontlines of DFPS shows that there is no fat to cut, and the belt has already been tightened to much.

Portions from Chapter 6 of the HHSC policy manual related to overtime, comp time, and use of leave are included here (see reverse). HHSC policy applies to DADS, DSHS, HHSC, FPS, & DARS.

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SECTION B - WORKING OVERTIME

Policy: The agency compensates employees with time off or pay for the overtime they are required to work, consistent with federal and state laws. The Federal Fair Labor Standards Act (FLSA) is a federal law that regulates overtime for workers, including state employees, who are covered by the act.

Required Overtime

An agency manager or supervisor may require an employee to work overtime. Supervisors are responsible for managing work effectively, so that employees are allowed or required to work beyond regularly assigned work hours only when there is a business necessity. Note: As a rule of thumb this means that normally assigned work should be organized in such a way that it can be completed within the work day. Overtime should be required only if there is critical coverage shortage in or in emergency situations.

SECTION C - FEDERAL FAIR LABOR STANDARDS ACT - OVERTIME

Policy: Most non-management employees are covered by FLSA & are entitled to FLSA overtime. FLSA overtime is the amount of time physically worked by an FLSA nonexempt employee in excess of 40 hours a workweek.

Compensation for FLSA Overtime

Employees who are covered by FLSA are entitled to compensation for the hours worked in excess of 40 hours either by *allowing or requiring the employee to take time off at the rate of 1.5 hours for each hour of overtime or *at the discretion of the agency head, paying the employee at the rate of 1.5 times the employees current regular rate of pay when granting them time off is impractical.

Limit on FLSA Overtime

Employees who are covered by FLSA may accumulate FLSA overtime credit of not more than 240 hours. Employees must be paid for FLSA overtime worked in excess of the limits on accumulation, at a rate equal to 1.5 times the employees regular rate of pay.

Note: Under federal and state law you cannot lose FLSA overtime. These are wages and cannot be taken away or shifted to sick hours. The agency must either allow the time off or pay you for overtime worked. You can accumulate this overtime up to 240 hours and then anything worked over 240 hours must be paid when due. Track your overtime hours separately from earned state compensatory time, holiday compensation, or accrued vacation time. They are separate things.

SECTION D - STATE COMPENSATORY TIME

Compensation

Employees, exempt and nonexempt from the FLSA, are compensated for state compensatory time either by:

- allowing or requiring compensatory time off during the 12 months following the workweek in which the overtime was accumulated, at a rate not to exceed equivalent time; or
- paying on a straight time basis for work on a holiday or for state compensatory time hours, only if the employees work in shortage occupations or the legislature specifically authorizes payment and when taking time off would disrupt normal business functions.

SECTION E - USING LEAVE

Allowing Employees to Use Leave

Leave for overtime worked must be granted to employees in a reasonable time after requested by the employee unless to do so would unduly disrupt the activities of the agency. The supervisor schedules the leave for overtime worked, after consulting with the employee.

State Compensatory Leave Requested 90 Days in Advance

A supervisor must allow employees to use state compensatory leave if it is requested in writing at least 90 days in advance of the date it is to be taken. If the request cannot be approved for the date requested, the supervisor must provide the employee with an alternate date on which the time can be taken.



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