

Green v. Hromatka

Case _____ RBW

Exhibit_4_of_____

WRC Exhibit 04 – On December 14 2009 defendant informs trainee(plaintiff) of the State Dept policy on overtime. The yellow highlighting was added by defendant. It demonstrates that Defendant was fully aware of the MO requirements of him



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Overtime and Comp Time For Specialists and Untenured Generalists Serving Overseas - AFSA Guidance Updated 06/08/2009

Summary

1. With some exceptions, Specialists and Untenured Generalists serving overseas are entitled to premium compensation (overtime pay or Comp Time off) under Title 5 of the US Code if they work more than 8 Hours per day or 40 hours per week. The following provides information on entitlements, exceptions and procedures. This cable does not deal with DS Agents receiving LEAP, for whom different rules apply. However, because entitlement to overtime compensation is very fact specific, we are only able to offer general guidance. In addition, this cable only highlights the basic requirements of the overtime laws. It does not cover all aspects of these laws. Thus, if you have a particular issue that you have been unable to resolve at post, we suggest you contact AFSA with the specifics.

Title 5 or FLSA?

3. **OVERALL CAP:** Under Title 5, you may receive premium compensation only if the premium pay does not cause your total pay (basic rate of pay plus premium pay) for any biweekly pay period to exceed the maximum payable basic rate of pay for GS-15/10 or an EX-V, whichever is greater. (2009 biweekly rate for a GS-15/10 without locality pay is \$4,891.20; for an EX-V it is \$5,500.72) For pay cap purposes, compensatory time off is assigned the same monetary value as overtime pay.

RATE CAP: Your overtime rate is capped at the greater of one and a half times the hourly rate of a GS-10, Step 1, or your own hourly rate. (150% of the 2009 hourly rate for a GS10/1 is \$32.42 per hour.) This means that if your hourly rate is \$21.61 or less, your overtime pay will be one and a half times your basic hourly rate. If your hourly rate is between \$21.61 and \$32.42, your overtime hourly rate will be **\$32.42**. If your hourly rate is more than \$32.42, your overtime hourly rate will be the same as your basic hourly rate. (To find your hourly rate, divide your annual salary by 2087)

When am I Entitled to Premium Compensation Overseas?

4. Under Title 5 you are entitled to premium compensation only when the overtime is ordered or approved in writing by an authorizing official. Form DS 3060 - "Authorization of Premium Compensation" should be used to document approved overtime.

-- If the overtime has been ordered or approved, premium compensation is required to be paid for work performed by a covered employee in excess of 8 hours in a day or 40 hours in an administrative workweek.

Types of Overtime Work

5. Under Title 5, a distinction is made between overtime work that is "regularly scheduled" and "irregular or occasional" overtime.

-- **"REGULARLY SCHEDULED"** overtime work means overtime work that is scheduled in advance (i.e., before midnight Sunday) as part of an employee's administrative workweek. For example, if your supervisor schedules you in advance of the workweek to work five hours of overtime to cover a visit by the Secretary of State, the overtime is considered "regularly scheduled" and you must receive overtime pay. If a supervisor schedules a Consular Section to work for ten hours a day in order to catch up with a backlog of work, then that too would be "regularly scheduled" overtime.

-- **"IRREGULAR OR OCCASIONAL"** overtime is not scheduled in advance of the administrative workweek. For example, in the course of the workweek, your supervisor asks you to stay after hours one night to finish a cable. In this case, the overtime is "irregular or occasional", and you may choose whether you want overtime pay or compensatory time off, as long as your basic rate of pay is at or below the maximum rate of a GS-10, Step 10 (see section on Overtime Pay or Comp time below).

-- However, omitting regular overtime from the scheduled tour of duty does not automatically make such overtime occasional or irregular. If an authorizing official had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek and had the opportunity to determine which employee had to be scheduled or rescheduled to meet the specific days and hours of that work requirement, the overtime may be converted to "regularly scheduled" work. For example, if you have been required to work four hours of overtime every Friday for the past two months to cover for a foreseeable recurring event, you have a good argument for having the overtime converted to "regularly scheduled overtime"

Overtime Pay or Comp Time?

6. The distinction between "regularly scheduled" overtime work and "occasional or irregular" overtime is vitally important, since it affects the type of compensation you can receive:

-- If the overtime is **REGULARLY SCHEDULED**, you must receive overtime pay (subject to the rates and caps applicable under paragraph 3 above)

-- If the overtime work is **IRREGULAR OR OCCASIONAL**, and your basic rate of pay is at or below the maximum rate for GS-10/10, you may choose either overtime pay or regular comp time. (GS10/10 in 2009 - \$58,622)

-- On the other hand, if the overtime is **IRREGULAR OR OCCASIONAL** and your basic rate of pay is greater than the maximum for a GS-10/10, then you are only entitled to receive comp time. (assigned the same monetary value as overtime pay and subject again to the EX-V biweekly overall cap)

Liquidating Regular Comp Time

7. Compensatory time off must be used within 26 pay periods (52 weeks) of the pay period in which it was earned or it is forfeited, unless you can show that the failure to use your earned compensatory time off is due to an exigency of the service beyond your control.

-- Those eligible for overtime payments under Title 5 do not have a statutory entitlement to receive payment for unused compensatory time off. However, while it is likely that 52 weeks will give most people sufficient time to schedule compensatory time off, it may be possible to request to have the comp time converted to money if you follow the correct

procedure (even if your basic rate of pay is greater than that of a GS-10/10), if you are a specialist or an untenured generalist who has been denied use of the leave because of the exigencies of the service.

-- The award of comp time must have been approved by your supervisor and recorded on form DS 3060, "Authorization of Premium Compensation".

-- You must request to take the comp time off by submitting Form SF-71, "Application for Leave".

So, in summary, if you have earned comp time, you must fill out the Application for Leave form and request to use the comp time within the 52-week period. If your supervisor denies the request and if there is no opportunity to reschedule the leave within the 52-week period, make sure that a copy of the SF-71 showing the disapproval, along with your written request for liquidation, is provided to the timekeeper to support the payment of the overtime.

Duty Officers and Call-Ins

8. If an employee who is on call actually performs work, via telephone or by reporting to the office, then the employee is entitled to compensation. For example, if you are serving as duty officer and must respond to a U.S. citizen who has lost his/her passport or has some other emergency situation, the time you spend on the telephone dealing with the situation is time spent working, and you are entitled to premium compensation for that time. You would track such time in quarter-hour increments and report that time as overtime. If you must actually report to the office after regular hours or on Saturday or Sunday, you are entitled to "call-back" overtime, which means you receive a minimum of 2 hours of overtime, even if you spend less than 2 hours working. If you can handle the situation via telephone from home, you are not entitled to the 2-hour minimum but only compensation for actual time spent working on the telephone.

IPC Hours and Call-ins

9. There are always many questions about IPC operating hours and Call - In time. Once again, this brief summary cannot hope to cover all eventualities, but essentially the following guidelines apply:

-- IPC operating hours can be decided at post management discretion, but any hours requiring an employee to work over and above 8 hours per day or 40 hours per week will attract premium compensation subject to the conditions described above, unless a "compressed work schedule has been instituted" (see below).

-- The "regularly scheduled," and "irregular or occasional" rules apply as described above.

-- If the regular schedule is an 8-hour day but (an) IPC employee (s) regularly works 9 hours, the extra hour would be "regularly scheduled" overtime and must be compensated with overtime pay. (Again, unless a compressed work schedule has been instituted [see below]).

-- Some posts have instituted a "compressed work schedule" for IPC employees. This is defined as a work schedule that allows a full-time employee to complete a basic 80-hour biweekly work requirement in fewer than 10 work days.

-- If your IPC allows employees a compressed schedule, those hours in excess of the established compressed schedule are considered overtime hours. So, if your regular work schedule includes 9 and 3/4 hours per day, only hours in excess of 9 and 3/4 hours in a day or a total of 80 hours in a pay period would be considered overtime hours.

-- Staying late at the front-office's behest would normally be "irregular or occasional," though as described above, if it happens on a regular basis, the overtime work is "regularly scheduled."

-- Call-ins, however, are by definition, "irregular or occasional," and may be compensated either with overtime pay or compensatory time, subject to the rules and caps described above.

-- Under Title 5, unscheduled overtime work performed by an employee on a day when work was not Scheduled for him/her, or for which he/she is required to return to his/her place of employment, is deemed at least 2 hours in duration. This means that any call-in is clocked as two hours, or actual time if the actual time is greater. The clock starts and stops upon entering and leaving the place of work, not when you leave from and return home.

-- See the rules above on "Liquidating regular comp time"

Questions or Concerns?

8. If you have specific concerns or questions regarding overtime pay or comp time which you cannot work out at post, please phone AFSA at (202) 647-8160; fax (202) 647-0265 or e-mail James Yorke on DOS OpenNet or via the Internet at "yorkej@state.gov". You may also contact Brenda Evenski, HR/RMA/WPC at 202-663-2330, fax 202-663-2354 or e-mail at "EvenskiBM@state.gov".

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