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THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION

SUBJECT: COMPLIANCE WITH FEDERAL OVERTIME LAWS	EXECUTIVE ORDER NO. 588
FROM: George Gross Administrator/Commissioner	June 20, 1986 Classifications: 1, 23, 41 Amends: P 80-6 (23, 41) P 71-18 (23, 41) I 74-40 (41)

Distribution: I through VI

Effective: March 15, 1986

I. GENERAL INFORMATION

The Fair Labor Standards Act (FLSA), became effective for covered New York City employees on April 15, 1986 as a result of a Supreme Court decision in February 1985 and the 1985 Congressional Amendments.

In response to FLSA, First Deputy Mayor Stanley Brezenoff issued an Administrative Order dated March 17, 1986, entitled "Compliance with Federal Overtime Laws" which detailed changes in the City's overtime procedures and practices. Authorizations to work overtime (whether voluntary or involuntary) must comply with Mayoral Executive Orders 82 and 56, Personnel Order 78/12, and Mayoral Directive 78/12, as well as the 1986 Brezenoff Administrative order, which require written authorization by the Agency Head or his/her designee(s) before the overtime work is performed. A model authorization form is attached as Appendix A.

II. SUMMARY OF IMPORTANT FLSA PROVISIONS

FLSA requires that covered (nonexempt) employees receive at least time and one-half their regular rates of pay for all hours actually worked in excess of 40 hours in a City established seven day period (workweek). Employees can be compensated in compensatory time at time and one-half, up to a maximum cap of 240 hours (160 hrs. x 1-1/2). ¹ / This rolling cap exists for the lifetime of the employee's City service.

¹ / Enforcement and Fire Protection personnel have an overtime cap of 480 hours (320 hours x 1-1/2).

Not all City employees are affected by FLSA. Certain employees simply are not covered by the Act (noncovered employees). Other employees, while covered by FLSA, are exempted by specific provisions of the Act (exempt employees).

III. AGENCY REQUIREMENTS

Effective April 15, 1986, agencies are required to establish three separate compensatory time banks for each employee; (1) all pre-FLSA prior to April 15, 1986 compensatory time; (2) post-April 14, 1986 non-FLSA compensatory time earned under 40 hours of time actually worked per week; and (3) post-April 14, 1986 FLSA compensatory time earned after 40 hours of time actually worked per week. These banks will enable the City to control the granting of overtime, including compensatory time with its associated costs. A bank of cash overtime must also be maintained.

The City is in the process of classifying titles and employees as covered (nonexempt) or not covered (exempt). The final determination of an employee's status depends on the actual job duties performed. Agencies will be responsible for ensuring that employees' individual job duties are examined to determine whether they are properly classified as noncovered or covered. There are some titles that do not appear on either list; until these are classified, they must be considered covered for recordkeeping purposes, but not for payment of overtime.

The working time of covered employees must be carefully scheduled and monitored to avoid unauthorized overtime claims. It is the duty of management to exercise strict control of its employees and to see that work is not performed if management does not wish that it be performed. The mere promulgation of a rule against unauthorized work will not be sufficient. It is incumbent upon the Agency Head, the Agency FLSA Coordinator and all managers and supervisors to ensure enforcement of the rule.

Covered employees may not start work before the workday commences or continue work after the workday has terminated unless properly authorized. Managers and supervisors must ensure that each covered employee records the employee's starting time at the beginning of the scheduled work day and at their scheduled finishing time. Covered employees must also sign in and out for lunch. Employees directed to work during their lunch period must be so authorized in writing by the Agency Head or a designated representative. The attached Model Daily Overtime Authorization Form and Model Recordkeeping Overtime Form are to be used to ensure compliance with the Act. The most important responsibility of managers is to make sure that employees complete an overtime form for each period of overtime worked. These forms are critical. Our ability to defend unmerited claims without these forms will be more difficult.

The amount of FLSA compensatory time for each covered employee must be regularly monitored. Once an employee has reached the 240 hour compensatory time rolling cap, cash overtime must be paid. This should be kept in mind when assigning overtime. Accrued FLSA compensatory time should be used prior to any other accrued compensatory time.