

**The Bill Blackwood  
Law Enforcement Management Institute of Texas**

**Overtime in Law Enforcement**

**A Policy Research Project  
Submitted in Partial Fulfillment  
of the Requirements for the Professional Designation  
Graduate, Management Institute**

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## **ABSTRACT**

The issue at hand is overtime in law enforcement, and the means of compensating employees for overtime worked. This is very important to law enforcement administrators who are routinely faced with limited budgets and staff.

The purpose of this project was to examine issues related to the use of overtime and its compensation. Issues examined include the role of the Fair Labor Standards Act, scheduling, and cost issues, as well as employee morale and fatigue.

Research included examination of the Fair Labor Standards Act as well as related case law. Also included in the research were surveys conducted of law enforcement administrators in attendance at the Law Enforcement Management Institute.

It is concluded that administrators must establish policies and guidelines concerning the use and compensation of overtime to maintain fair standards, and avoid litigation. Policies must then be enforced, and records must be kept. It is recommended that each administrator examine all issues relevant to their own department, including area of coverage and resources available, in formulating a policy that will be right for their own agency.

## **Introduction**

The purpose of this project is to examine overtime in law enforcement, with an overall view, and a focus on overtime in the Fayette County Sheriff's Department. This project will examine advantages and disadvantages of several methods of compensating overtime, including cash payment, compensatory time, and combinations of those two methods. This project will also examine different effects on law enforcement personnel that are related to overtime and method of payment, including effects on morale, and fatigue of officers who work too many hours. This project will also take a brief look at abuses of overtime that have occurred in some law enforcement organizations, as well as financial effects on the paying entities.

The problem at issue is a large accumulation of compensatory time in the Fayette County Sheriff's Department. Fayette County is a small county, with a population of approximately 20,000 people. The Fayette County Sheriff's Department has a limited number of personnel to provide 24 hour a day, 7 day a week law enforcement coverage. Fayette County also has a policy of mandatory compensatory time, with no paid overtime. This has resulted in a small number of people accumulating large hours of compensatory time. As employees take off their compensatory hours, other employees work more to fill shifts and answer calls, resulting in further accumulation. A problem has resulted in trying to keep compensatory time accumulations to manageable levels within the confines of the Fair Labor Standards Act.

The intended audience for this project is the Sheriff of Fayette County and his administrative staff. This project is also directed to the Fayette County Commissioners' Court, as well as other law enforcement administrators who may have similar problems with overtime.

Sources of information to be reviewed for this project include books, periodicals, personal interviews and case law, as well as statistics from the Fayette County Sheriff's Department.

The intended outcome of this project is to define the problem that exists for the Fayette County Commissioners' Court and the administrative personnel of the Fayette County Sheriff's Department. This project also seeks to examine possible methods of dealing with the problem, and their applicability to the Fayette County Sheriff's Department. This project will then provide recommended solutions that may be suited directly to the Fayette County Sheriff's Department.

#### **Historical, Legal or Theoretical Context**

The federal law that controls the accrual and use of compensatory time off is the Fair Labor Standards Act. The Fair Labor Standards Act (FLSA) was enacted in 1938 to meet minimum wage and hours worked concerns for all employees engaged in commerce or production of goods for commerce. (Fair Labor, House Report, p. 5). The FLSA stated that work in excess of a certain number of maximum hours per week must be paid at one and one-half times the normal hourly wage. In its definition of employer, the FLSA specifically excluded "the United States or any State or political subdivision of a State". (Public Sector, p. 3).

Under the FLSA Amendments of 1966, the definition of "enterprise" coverage was extended to include state institutions such as hospitals and schools, as well as some public transportation employers. The United States Supreme Court upheld this inclusion in *Maryland v. Wirtz* (1968). In 1974, Congress expanded the FLSA to cover all state and local government employees, unless specifically exempted. The 1974 amendments included a limited overtime

exception for police officers and firefighters. In 1976, the Supreme Court (*National League of Cities v. Usery*) overruled the Wirtz decision, and held that the 1966 and 1974 amendments to the FLSA were unconstitutional. The Court stated that these amendments interfered with the integral or traditional governmental functions of states and their political subdivisions. This decision was limited to the minimum wage and maximum hours provisions of the FLSA. (Fair Labor, House Report, p.5-7).

In 1979, the Department of Labor (DOL) issued final regulations defining traditional and non-traditional governmental functions. The DOL defined local mass transit systems as non-traditional, which included them in the minimum wage and maximum hours provisions of the FLSA. A number of public transit authorities challenged the DOL definition. Ultimately, the issue was returned to the Supreme Court to answer the question of whether the Department of Labor determination was a proper application of *National League of Cities*. (Fair Labor, House Report, p. 7).

An employee of the San Antonio Metropolitan Transit Authority, Joe Garcia, argued that employees of publicly-owned mass transit systems are covered by the overtime provisions of the Fair Labor Standards Act. As a city bus driver, he was working a standard 43.75 hour workweek payable at the regular hourly base wage. In 1985 (*Garcia v. San Antonio Metropolitan Transit Authority*), the Supreme Court agreed with Joe Garcia, overruling the decision of *National League of Cities*. (Public Sector, p. 1).

Prior to the Garcia decision, governmental entities relied on exemption from FLSA. It was clear that the costs of coming into line immediately with the Garcia decision would place a great financial burden on state and local governments. State and local governments and their

employees voluntarily worked out arrangements for use of compensatory time off in lieu of pay. This was not provided for by the FLSA, under which state and local governments were now required to operate. (FLSA, Senate Report 99-159 p. 8-10). Between the Garcia decision and November, 1995, aggressive legislative activity took place, and on November 14, 1985, President Ronald Reagan signed into law the 1985 amendments to the FLSA, which effectively limited the overall impact of the Garcia decision. (Fair Labor Revisited p.4).

Section 7(k) of the FLSA provides a limited exemption to the maximum hours provision for employment of employees in fire protection or law enforcement activities. The Secretary of the Department of Labor was mandated by statute to conduct a study of average hours worked by these selected employees to determine maximum hours allowable before overtime would be triggered. As a result of the study, standards for law enforcement are 171 hours in a 28 day work period for law enforcement, and 212 hours in a 28 day work period for fire protection employees. This work period may be set from 7 to 28 days, with hours corresponding. (U. S. Dept. of Labor, FLSA of 1938 p. 11). (See Appendix A - Ginsburg 600:37).

Section 7(o) of the FLSA provides an element of flexibility to State and local government employers and an element of choice to their employees regarding compensation for statutory overtime hours. The exemption provided by 7(o) allows specified governmental entities to provide compensatory time off, with certain limitations, in lieu of monetary overtime compensation. Compensatory time received by an employee in lieu of cash must be at the rate of not less than one and one-half hours of compensatory time for each hour of overtime work. (Federal Register 52:2014).

The provisions in the 1985 amendments to the FLSA have remained intact through

court challenges and more recent amendments. The FLSA, however, remains a controversial document that challenges government employers to understand and meet its requirements. For law enforcement, the major issues of the FLSA remain in the hours worked and overtime/compensatory time provisions.

### **Review of Literature or Practice**

For law enforcement, the need to provide service on demand, 24 hours a day, 7 days a week, poses special scheduling problems that are not simple or unimportant. One of the goals of an effective schedule is to reduce overtime and manage compensatory time off. (Stenzel pp. xvii, 111).

A study by the Greenville, South Carolina Police Department found that there were many benefits to a uniform patrol schedule. The objectives of the uniform schedule were to lessen stress, improve efficiency, and reduce costs for overtime work. These objectives were accomplished within three months by scheduling in the Greenville Police Department. Reduction in overtime through the new schedule resulted in savings of over \$10,000 in the first thirteen weeks. The schedule adopted by the department was four nine hour work days followed by two days off. (Dees pp. 43, 48).

While this schedule worked for the Greenville Police Department, it is important to remember that different size departments will have varied needs and staffing levels. However, managing the working schedule may play a large part in the reduction of overtime.

The Berkeley, California Police Department conducted a study to determine if overtime expenditures could be reduced without negatively impacting the provision of police services. The study determined that overtime in the police department was structurally necessary, and that



overtime controls should not interfere with emergency police services.

The Berkeley Police Department also looked into alternative scheduling as a means of reducing their overtime. They found a plan formulated by the Fremont, California Police Department that was not only popular with staff, but was also able to reduce overtime as well. This plan consisted of five nine hour days, followed by either two or three days off. Employees received a greater number of three consecutive day off periods than two consecutive day off periods. (See Appendix B).

Along with the schedule change, the Berkeley study also made other recommendations. The study suggested that employees should be required to give specific reasons for their overtime requests, including a case number or incident number. A policy should also be instituted to use "off setting time off". Briefly, this means to take off overtime worked within the same pay period. The recommendation was also made to end the policy of using compensatory time off and vacation or sick leave to make up the 40 hours needed to qualify for paid overtime. (Rabkin, pp. 1-22).

A survey of law enforcement representatives attending the Law Enforcement Management Institute Module I from June 14 to July 2, 1998 was also conducted. The survey found a wide variance in schedules, and different methods of handling overtime. Nine of thirteen departments surveyed use a 40 hour workweek.

Ten out of thirteen departments gave employees a choice between paid overtime and compensatory time. Two of the remaining departments use only paid overtime. One department uses only paid overtime until budgeted funds are exhausted, and then mandates compensatory time.

Of the ten departments that give employees a choice between paid overtime and compensatory time, six stated they were generally satisfied, and would change nothing about the overtime policy in use. Suggested changes in the other four included changing the "work period", which ranged from a 40 hour week to a 28 day period, and beginning the calculation of overtime based on an 8 hour day.

Departments surveyed ranged from small to large in size, with the largest being Houston Police Department. Independent School District Police Departments were not included in the survey, due to also being affected by school district policies.

Research conducted indicates that schedule management is the primary means of dealing with excess overtime. When overtime becomes a problem, the schedule is the first item to be analyzed and changed. Many departments utilize "flex" time; taking overtime off in the same work period, so that it is no longer compensable at time and one half.

Studies by the larger Berkeley and Greenville Police Departments also indicated that employee morale and fatigue were issues considered. Both mentioned employee satisfaction with new schedules as an important factor. The Berkeley study also found that use of sick leave was reduced when employees were happy with the schedule. (Rabkin, p. 7).

Clearly, there are several options for departments to consider when choosing a method to reduce overtime. There are also options to be considered for the compensation of overtime worked. No single solution will be satisfactory for every department. The size of a department and its necessary staffing levels are of paramount importance in making such decisions. Each department must take a long look at what will work for "their" department, to accomplish the goals of 24 hour law enforcement coverage with reduction in personnel costs.

### **Discussion of Relevant Issues**

A major concern from an administrative point of view is the abuse of overtime. When abuse of employee overtime is revealed, it is usually in a very public manner. In 1995, the Fairfax County, Virginia Journal reported that many officers were doubling their salaries with overtime pay. The extra time was attributed, according to the police chief, to court appearances, roll call, and K-9 officers care of their animals. (Morris, Online).

Also in 1996, the Miami Herald reported abuse of overtime in the Miami, Miami Beach and Metro Police Departments. A study revealed that numerous police officers flocked to DUI arrests to qualify as witnesses. Witnesses were then called to court at time and a half, and paid a minimum of three hours per appearance in one department, even if they were only required for one minute. In 6445 DUI arrests, 5 or more officers showed up, and 8 to 9 officers was not infrequent. (Heraldlink, Online).

Scheduling is also an issue with administrators who have a need to provide twenty four hour police coverage with limited personnel. The FLSA requires payment for work that the employer knows about, or should have known about. (Phelps, p. 21). This means that if an employee comes to work fifteen minutes early on a regular basis, then the supervisor is obligated to either tell the employee not to come in early, or to pay for the fifteen minutes. This poses problems for departments who have a fifteen to thirty minute overlap of shifts for roll call or other activities.

Another scheduling problem arises for departments that use compensatory time off in lieu of paid overtime. The requirement under FLSA is that the employee be allowed to use the time off provided that reasonable notice is given, and that granting the time off will not unduly

compromise the operations of the employer. Generally, three days notice has been determined by the Department of Labor to be reasonable. (Coble, p. 148).

Departments that opt to use compensatory time must remember that the employee owns the compensatory time. Management cannot refuse to let an employee use compensatory time simply because another employee will have to work overtime to cover the absence. (Phelps, p. 21). In law enforcement, the health, welfare and safety of the public are at stake when employers are forced to cede to their employees discretion over when time off will be taken. (Coble, p. 148). Administrators should carefully consider the long term effects of relying on compensatory time in lieu of overtime pay. This may delay and increase actual costs. (Phelps, p. 21). Officers may not be allowed to accrue more time than the employer can reasonably expect to be able to grant off within a reasonable time frame. Employers should be discouraged from using compensatory time off as a form of deficit spending. (Coble, p. 148). It is recommended that where the problem of disruption of services is persistent due to manpower shortages or other reasons, compensatory time should not be the preferred method of compensation for overtime worked. (Miller, p. 76).

An example of the cost of compensatory time can be easily shown. FLSA requires that an employee who terminates be paid any outstanding compensatory time at the higher of their current hourly rate, or the average of the last three years. If an employee was due 60 hours (40 hours actually worked) in 1996 at an hourly rate of \$10.00, the amount due would be \$600.00. If this time was accrued into 1997, and the employee was raised to \$12.00 per hour, at the end of 1997, this time worked in 1996 would be worth \$720.00. If the time was accrued into 1998, at an increased hourly rate of \$15.00, it would now be worth \$900.00. If the employee terminated

at the end of 1998, the employee would receive the \$900.00. The cost would also increase by the amount of fringe benefits due on this amount. This would include social security tax and retirement paid by the entity for the employee. Because these are normally percentage amounts, they will increase with the amount of pay due the employee.

Employee morale and fatigue are other issues that must be considered by administrators. In a compensatory time situation, when employees request time off, departments may be forced to work short-staff in order to prevent further overtime. This causes an extra burden on employees who are working, who will be required to handle extra calls, and may end up with their own overtime. It logically follows that employees who are overworked will become fatigued, and performance levels will be reduced.

There are also other aspects of FLSA that must be considered. There must be an understanding or agreement of some kind prior to the work being done. It is not essential that the agreement be written, however, a record of the agreement must be maintained by the employer. Employees can be limited to accrual of a certain number of hours. Restrictions may also be placed on how long the hours may be "banked", and as to what amount of notice will be required to use the time. It is also permissible to use combinations of paid overtime and compensatory time. Although an employee may not be forced to use compensatory time that is accrued, an employee may be required to use compensatory time before taking vacation time, even if vacation time will be lost. (Collins, p.10).

As there are many issues to consider when formulating a policy regarding overtime and compensatory time, it is recommended that administrators carefully study their own situations, and decide what will work well in their own departments.

## **Conclusion/Recommendations**

The purpose of this research is to examine overtime and the use of compensatory time off in lieu of payment for overtime, and to formulate a plan that would work for Fayette County, Texas. This research is relevant to any law enforcement agency in which overtime is an issue.

The problem that is examined is the accumulation of compensatory time, and the logistical problems of granting this time off when large amounts have been accumulated. This paper has also examined many issues that must be considered in formulating a policy in this area.

It may be concluded that staying within the boundaries of the Fair Labor Standards Act is a complex matter. There are rules that apply to everything from on-call time to training time. Departments must examine all issues relevant to their staffing needs, including whether there is enough staffing to cover those needs.

Along with level of staffing, scheduling must be considered. In a small department with limited resources, it may be necessary to concentrate the largest number of employees at what are considered peak hours for activity, for example on weekends and in the evenings. It will also be necessary to examine the current policies for overtime, and the resulting issue of how it is compensated.

In Fayette County, there are several areas in which changes may be made. It is recommended that Fayette County formulate a policy dealing with overtime, rather than simply placing itself under the "7k" exemption for law enforcement. Even within the confines of the FLSA, there are restrictions that may be placed. Instead of using the 480 hour cap on compensatory time, this could be reduced. Guidelines could be established regarding the amount

of notice required to take off compensatory time. Stricter enforcement of the flex policy should be utilized. Employees could also be offered a choice of whether to be paid for the overtime worked or accumulate compensatory time.

A close study should be made of the costs associated with the time now "banked" by the employees in Fayette County. It may be beneficial, in the long run cost aspect, to reduce the amounts in the bank to a manageable level by paying out some of this time in cash.

It is logical by the very nature of law enforcement that overtime will always remain an issue to be dealt with. Administrators can choose to be a leader in the field when dealing with this problem, or be dragged kicking and screaming into the future with litigation. The time to face the issue is now.

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## APPENDIX A

### Maximum Hours Worked (Rounded) Before Overtime:

Consecutive Day Work Period	Hours of Fire Protection	Hours of Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

## **APPENDIX B**

### **Example – Fremont Schedule**

The Fremont Schedule consisted of the following:

A. Five nine-hour days worked followed by two days off

or

B. Fivenine-hour days worked followed by three days off.

Employees worked a combination of A and B, and the schedule worked out so that employees worked more of the B schedule. This resulted in receiving three consecutive days off for the majority of their schedule.