



**STATE OF OKLAHOMA  
OFFICE OF PERSONNEL MANAGEMENT**

*"Serving Equal Opportunity Employers"*

**OPM 05-31**

**TO:** All Appointing Authorities

**FROM:** Oscar B. Jackson, Jr., IPMA-CP, Administrator and  
Cabinet Secretary of Human Resources and Administration

A handwritten signature in cursive, appearing to read "Oscar B. Jackson, Jr.", positioned to the right of the "FROM:" field.

**DATE:** June 28, 2005

**SUBJECT: Emergency Amendments to the Merit Rules for Employment**

Enclosed please find the text of emergency amendments to the Merit Rules for Employment. These amendments become effective July 1, 2005. Due to budgetary constraints, the Office of Personnel Management has no current plans to produce a rulebook or supplement for distribution to all state employees. However, all currently effective Merit Rules adopted by the Administrator are available on the Office of Personnel Management's website at:

[http://www.opm.state.ok.us/html/hr\\_policy\\_rules\\_rule.htm](http://www.opm.state.ok.us/html/hr_policy_rules_rule.htm)

The emergency amendments to the Merit Rules enclosed with this memorandum will be available at the above website address beginning July 1, 2005.

The major amendment to the Merit Rules in this rulemaking process is the 5% upward adjustment to the Pay Band Schedule.

The Office of Personnel Management's FY 2005 Annual Compensation Report revealed that pay for classified employees is, at an average, 11.43% below the competitive labor market. This finding is consistent with those of the previous two years. OPM recommended, and Governor Henry approved, a 5% upward adjustment to the Pay Band Schedule in an effort to address the pay disparity. The Pay Band Schedule has not been adjusted since 2001.

Other amendments to the Merit Rules in this rulemaking process were made to provide clarity to the Affirmative Action Plan process, limits on compensatory time for exempt employees, and agency options in dealing with intra-agency lateral transfers. The emergency rule amendments follow.

*"We serve the people of Oklahoma by delivering reliable and innovative human resource services to our partner agencies to achieve their missions."*

## TITLE 530. OFFICE OF PERSONNEL MANAGEMENT

### CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

#### SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

##### PART 3. AFFIRMATIVE ACTION

###### **530:10-3-33.6. Availability analysis**

Affirmative action plans for agencies authorized **15** or more full-time-equivalent employees shall include an analysis of the number of minorities and females available to the workforce of the agency. An Appointing Authority shall:

- (1) Prepare an availability analysis for each job group;
- (2) Use the ~~“Labor Force Information for Affirmative Action Programs” published by the Oklahoma Employment Security Commission~~ civilian labor force information identified by the Administrator to obtain the raw availability percentage of minorities and females in the workforce, unless more appropriate data is available;
- (3) Consider all of the following availability factors and use at least one of the most appropriate considering how individuals are usually selected for employment within each job group:
  - (A) Percentage of minority population of the labor area surrounding the facility and the percentage of women seeking employment in the labor area surrounding the facility;
  - (B) Rate of minority or female unemployment in the surrounding labor area;
  - (C) Percentage of minorities or females in total work force in the immediate labor area;
  - (D) Availability of minorities or females with the requisite skills in the immediate labor area;
  - (E) Availability of minorities or females having requisite skills in the area which the agency can reasonably recruit;
  - (F) Percentage of minorities or females promotable and transferable within the agency’s organization in the labor area. Unless a greater weight is approved by the Administrator, the weight for this factor shall not exceed **15%**;
  - (G) The existence of training institutions capable of training persons in the necessary skills;
  - (H) Estimate of training efforts the agency is reasonably able to undertake to make the job group available to minorities and females; and
  - (I) Other relevant factors if approved by the Administrator;
- (4) Determine the appropriate geographic area for each factor used. This shall include the recruitment area from which most employees are drawn ~~and may vary between factors according to which table in the OESC State of Oklahoma Labor Force Information for Affirmative Action Programs is used;~~
- (5) Weight each factor used. The weight shall represent the percentage of all employees in the job group who come from the source referenced in a particular factor, and the total of all factors used shall always equal **100%**; and

(6) Complete a form prescribed or approved by the Administrator to record availability analysis. The form shall provide spaces for availability information, including but not limited to: EEO job category and job group data, raw availability statistics, availability factors, weight factors, labor and recruitment areas, sources of data, and final availability percentage.

**530:10-3-33.7. Utilization analysis**

(a) Affirmative action plans for agencies authorized **15** or more full-time-equivalent employees shall include an analysis of the utilization of minorities and females in the agency's workforce ~~for~~ as of June 30th of each year.

(b) Appointing Authorities shall use a commonly-recognized statistical method to determine if underutilization exists, i.e., there are fewer minorities or women in a particular job group than would reasonably be expected by their availability.

(1) Agencies authorized less than **200** full-time-equivalent employees shall use the "80% method" to determine underutilization, unless another method is approved by the Administrator. The "80% method" declares underutilization to exist if the females or minorities in a job group are less than 80% of their availability or if the number of females or minorities in a job group is zero.

(2) Agencies authorized **200** or more full-time-equivalent employees ~~shall~~ may use the "80% method" as described in paragraph (1) of this subsection, or ~~may use~~ one of the following methods:

(A) The "whole person" method. When this method is used, underutilization is declared if the number of females or minorities is as much or more than one person below the number that would cause the job group representation percentage to match exactly the availability percentage.

(B) The "two standard deviation" method. When this method is used, underutilization is declared if the number of females or minorities in a job group is more than two standard deviations below availability.

(C) Another method approved by the Administrator.

(c) Appointing Authorities shall complete a form prescribed or approved by the Administrator to show a comparison of the actual employment of minorities and women with their relative availability in the applicable job groups. The form shall provide spaces for summary information, including but not limited to: total staffing, numbers of minorities and females, final availability percentages, job group percentages, and determination of underutilization.

(d) A declaration of underutilization in an affirmative action plan shall not constitute an admission of wrongdoing or a determination that discriminatory practices are occurring in the agency.

**SUBCHAPTER 7. SALARY AND PAYROLL**

**PART 1. SALARY AND RATES OF PAY**

**530:10-7-12. Payment of overtime**

(a) An Appointing Authority shall neither require nor allow employees to work in excess of **40** hours a week without establishing and implementing a comprehensive policy for compensation. Such policy shall be in compliance with the Fair Labor Standards Act (29 U.S.C. 201 et seq.). The policy shall be made available by the Appointing Authority to interested persons upon request and the Appointing Authority shall so notify employees.

Copies of such policy shall be forwarded to the Office of Personnel Management. This section is not a comprehensive listing of the provisions of the Fair Labor Standards Act (29 U.S.C, 201 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations.

(b) FLSA Non-Exempt (as defined by the Fair Labor Standards Act) employees shall be paid 1-1/2 times their regular hourly rate for each overtime hour worked.

(c) Compensatory time in lieu of overtime payment at the rate of time and one-half may be given to FLSA Non-Exempt employees (as defined by the Fair Labor Standards Act) subject to the following conditions:

(1) Prior to the performance of overtime work, the Appointing Authority and the employee shall agree in writing that the employee may be required to take compensatory time in lieu of overtime pay. A written agreement is not required with respect to employees hired prior to April 15, 1986, if the employer had a regular practice in effect on April 15, 1986, of granting compensatory time off in lieu of overtime pay (29 U.S.C. 553.23).

(2) An employee shall be permitted to use accrued compensatory time within **180** days following the pay period in which it was accrued. The balance of any unused compensatory time earned but not taken during this time period shall be paid to the employee. An Appointing Authority may request an extension of this time period for taking compensatory time off up to an additional **180** days providing the Appointing Authority submits proper documentation to the Office of Personnel Management justifying the extension. Agencies shall not be allowed to extend the initial 180-day time period for employees working in an institutional setting as defined by 74:840-2.15(D) [74:840-2.15(C)]. All extensions are subject to the approval of the Office of Personnel Management.

(3) The maximum compensatory time which may be accrued by a FLSA Non-Exempt employee shall be **480** hours for those employees engaged in a public safety or firefighting activity and **240** hours for all other FLSA Non-Exempt employees.

(4) An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation for any additional overtime hours worked at the rate of 1-1/2 times their regular hourly rate of pay for each overtime hour worked.

(5) Payment for accrued compensatory time upon termination of employment with the agency shall be calculated at the average regular rate of pay for the final **3** years of employment, or the final regular rate received by the employee, whichever is the higher.

(6) Overtime and compensatory time is accrued by work period, as defined by the FLSA.

(7) Compensatory time shall not be transferred from one agency to another agency.

(8) An Appointing Authority shall approve an employee's request to take compensatory time off on a particular day, unless the employee's taking compensatory time off on that day disrupts agency operations or endangers public health, safety, or property.

(9) Accrued compensatory time shall be exhausted before the granting of any annual leave for a non-exempt employee except when the employee may lose accrued leave under 530:10-15-10 and 530:10-15-11(b)(5).

(10) Adjustments in scheduled work time may be made on an hour-for-hour basis within the work period.

(d) Appointing Authorities may provide compensatory time off to FLSA Exempt (as defined by the Fair Labor Standards Act) employees with the following stipulations:

(1) The compensatory time off shall be taken within time periods and policy outlined in 530:10-7-12(c)(2). Unused compensatory time shall be taken off the books if not taken by the end of the time periods and policy outlined in 530:10-7-12(c)(2).

(2) Compensatory time shall only be given on an hour-for-hour basis, 1 hour off for each hour worked overtime. The maximum compensatory time which may be accrued by an FLSA exempt employee shall be the same as that outlined in 530:10-7-12(c)(3).

(3) Payments shall not be made for compensatory time accrued by an employee on FLSA Exempt status for any reason, except as provided for in (e) of this Section.

(e) After submitting written notice to the Office of Personnel Management, an Appointing Authority may provide overtime payments to persons in FLSA Exempt classes based on a prevailing market condition.

## SUBCHAPTER 11. EMPLOYEE ACTIONS

### PART 7. TRANSFERS AND VOLUNTARY DEMOTIONS

#### **530:10-11-71. Intra-agency lateral transfer**

(a) The intra-agency lateral transfer of a permanent employee from one position to another position in the same job family or another job in the same pay band, for which the employee has currently qualified, may be made at any time by the Appointing Authority. ~~Such transfer may be made simultaneously with a promotion or demotion in accordance with the provisions of the Merit Rules.~~

(b) Upon intra-agency lateral transfer, an employee shall serve a six-month trial period in the job level to which the employee is transferred, unless the trial period is waived in writing by the Appointing Authority. [74:840-4.12] If an employee does not prove to be satisfactory in the new job during the trial period, the employee may be reinstated to the former position or another in the same job family level, at the salary the employee would have received if the transfer had not taken place. The employee shall be informed in writing of any action taken pursuant to this provision.

(c) *A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have jurisdiction to entertain an appeal of an employee from action of the employing agency transferring the employee from one county or locality to another, changing the assigned duties of the employee, or relieving the employee from performance of duty at a particular place and reassigning to the employee duties to be performed at another place, unless:*

- (1) the action results in a change in job classification or reduction of base salary; or*
- (2) an investigation by the Commission indicates that a violation of the provisions of Section 840-2.5 or 840-2.9 of . . . [the Oklahoma Personnel Act] may have occurred;*  
*or*
- (3) it is established that the action was clearly taken for disciplinary reasons and to deny the employee the right of appeal. [74:840-4.19]*

**APPENDIX A. PAY BAND SCHEDULE [REVOKED]**

**APPENDIX A. PAY BAND SCHEDULE [NEW]**

<b>PAY BAND</b>	<b>MINIMUM</b>	<b>MIDPOINT</b>	<b>MAXIMUM</b>
A	\$12,483*	\$15,968	\$19,960
B	\$12,551	\$16,735	\$20,919
C	\$13,278	\$17,704	\$22,130
D	\$14,315	\$19,087	\$23,859
E	\$15,747	\$20,996	\$26,245
F	\$17,321	\$23,095	\$28,869
G	\$19,055	\$25,406	\$31,758
H	\$20,960	\$27,946	\$34,933
I	\$23,211	\$30,948	\$38,685
J	\$25,517	\$34,023	\$42,529
K	\$27,893	\$37,190	\$46,488
L	\$30,681	\$40,908	\$51,135
M	\$34,056	\$45,408	\$56,760
N	\$37,803	\$50,404	\$63,005
O	\$42,338	\$56,451	\$70,564
P	\$47,843	\$63,790	\$79,738
Q	\$54,063	\$72,084	\$90,105
R	\$61,091	\$81,454	\$101,818

\*Adjusted for state minimum wage of \$6.00/hour