

FEDERAL EMPLOYEES' PAY REGULATIONS

Special Provisions for Certain Types of Work--Positions in Which the Hours of Duty Cannot be Controlled Administratively, and Which Require Substantial Amounts of Irregular, Unscheduled, Overtime, Night, and Holiday Duty

§25.261 Authorization of additional annual compensation. (a) Premium pay on an annual basis may be paid to any officer or employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty and duty at night and on holidays with the officer or employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. Such additional compensation on an annual basis takes the place of any other premium compensation prescribed in this subpart except premium compensation for regularly scheduled overtime duty. It may not exceed 15 percent of such part of the rate of basic compensation as does not exceed the minimum rate for grade GS-9 in the Classification Act of 1949, as amended.

(b) This permissive authority extends to any department, any judicial or legislative agency to which this section applies (see §25.201 (b)), and to the municipal government of the District of Columbia. Payment of such additional compensation on an annual basis is subject to the approval of the Civil Service Commission. The Commission has approved payment of such additional compensation at the rate and under conditions specified in this subpart. Departments and other agencies are responsible for individual actions within the provisions of this subpart.

§25.262 General restriction. No employee shall be paid additional annual compensation under §25.261 if such compensation would, over a period of time appropriate to reflect the full cycle of his duties and the full range of conditions in his position, exceed the premium pays which would otherwise be payable under other sections of this subpart for the hours of duty required in his position, exclusive of regularly scheduled overtime duty.

§25.263 Bases for determining positions for which additional compensation under §25.261 is authorized. (a) By the nature of the work of such positions, "the hours of duty cannot be controlled administratively."

(1) One typical job situation in which the hours of duty cannot be controlled administratively: (i) The hours of duty of an investigator of criminal activities are governed by what criminals do and when they do it. He is often required to perform such duties as shadowing suspects, working incognito among those under suspicion, searching for evidence, meeting informers, making arrests, and interviewing persons having knowledge of criminal or alleged criminal activities. His hours on duty and place of work depend on the behavior of the criminals or suspected criminals and cannot be controlled administratively.

(ii) In such a situation, hours of duty cannot be controlled by such administrative devices as hiring additional personnel; rescheduling the hours of duty (which can be done when, for example, a type of work occurs primarily at certain times of the day); or granting compensatory time off duty to offset overtime hours required.

(b) In order to satisfactorily discharge the duties of such positions, employees are required to perform substantial amounts of "irregular, unscheduled, overtime duty, and duty at night and on holidays."

(1) A substantial amount of irregular, unscheduled, overtime duty means an average of at least six hours of such overtime duty a week.

(2) The irregular, unscheduled, overtime duty is a continual requirement, generally averaging more than once a week.

(3) There must be a definite basis for anticipating that the irregular, unscheduled, overtime duty will continue over an appropriate period of time with a duration and frequency sufficient to meet the requirements under subparagraphs (1) and (2) of this paragraph and that night and holiday duty will be performed from time to time.

(c) The employee generally is "responsible for recognizing, without supervision, circumstances which require him to remain on duty."

(1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.

(2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.

(3) "Recognition of circumstances" does not include such clear-cut instances as, for example, when an employee must continue working because a relief fails to report as scheduled.

(') (1) "Circumstances which require an employee to remain on duty" means requiring the employee to continue on duty in continuation of a full daily tour, or that, after the end of the regular workday, the employee resumes duty in accordance with prearranged plans or an awaited event. Performance of only call-back overtime assignments, referred to in §25.222 (f) of this subpart, does not meet the requirement.

(ii) The requirement is that the employee remain on duty in continuation of a full, regularly scheduled, daily tour of duty. The employee has no choice as to when or where he may perform the work. This differs from a situation in which an employee has the option of taking work home or doing it at the office; or doing it in continuation of his regular hours of duty or later in the evening. It also differs from a situation in which an employee has such latitude in his working hours, as when in a travel status,

that he may decide to begin work later in the morning and continue working later at night to better accomplish a given objective.