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TRADOC Regulation 690-16

23 July 2021

Civilian Personnel

Administration of the U.S. Army Training and Doctrine Command
Fair Labor Standards Act Program

FOR THE COMMANDER:

MARIA R. GERVAIS
Lieutenant General, U.S. Army
Deputy Commanding General/
Chief of Staff

OFFICIAL:



WILLIAM T. LASHER
Deputy Chief of Staff, G-6

History. This is a new U.S. Army Training and Doctrine Command regulation.

Summary. This regulation prescribes policy and procedures for U.S. Army Training and Doctrine Command implementation of the Fair Labor Standards Act.

Applicability. This regulation applies to all U.S. Army Training and Doctrine Command organizations and activities.

Proponent and exception authority. The proponent of this regulation is the U.S. Army Training and Doctrine Command Deputy Chief of Staff, G-1/4. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent.

Army Management Control Process. This regulation does not contain management control provisions.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the U.S. Army Training and Doctrine Command, Deputy Chief of Staff, G-1/4, 661 Sheppard Place (ATBO-C), Fort Eustis, VA 23604-5745.

Suggested improvements. Users are invited to send comments and suggested improvements on Department of the Army (DA) Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the U.S. Army Training and Doctrine Command, Deputy Chief of Staff, G-1/4, 661 Sheppard Place (ATBO-C), Fort Eustis, VA 23604-5745.

Distribution. The official version of this regulation is published electronically on the TRADOC Administrative Publications website (<http://adminpubs.tradoc.army.mil/>).

Summary of Change

Training and Doctrine Command Regulation 690-16
Administration of the U.S. Army Training and Doctrine Command Fair Labor Standards Act Program

This new publication, dated 23 July 2021-

o Prescribes policy and procedures for U.S. Army Training and Doctrine Command implementation of the Fair Labor Standards Act.

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Introduction

1. Fair Labor Standards Act status

The FLSA is a federal law which provides for the establishment of fair labor standards in employment; it includes the requirement for employers to pay covered nonexempt employees overtime pay. Overtime entitlements for civilian employees depends on their FLSA status. U.S. Army Training and Doctrine Command (TRADOC) organizations and activities will work with U.S. Army Civilian Human Resources Agency (CHRA) and the servicing civilian personnel advisory center (CPAC) personnel to make and document FLSA determinations for general schedule (GS) positions based on the duties and responsibilities actually performed, which should be properly set forth in the position descriptions (PDs).

2. References

See appendix A.

3. Explanation of abbreviations and terms

See the glossary.

4. Responsibilities

a. The TRADOC Deputy Chief of Staff, G-1/4 will-

- (1) Establish policy and procedures concerning civilian employees and the application of FLSA.
- (2) Provide courses of action to leadership on evolving civilian employee issues.
- (3) Provide procedural guidance to subordinate organizations about civilian employee issues.

b. TRADOC commanders, commandants, and directors will-

- (1) Ensure this regulation is disseminated to all employees.
- (2) Ensure all supervisors and managers adhere to the FLSA when assigning or allowing overtime work-and that they understand the key differences in overtime provisions for exempt versus nonexempt FLSA employees.
- (3) Ensure all employees adhere to the FLSA when working outside duty hours.
- (4) Ensure all supervisors and managers keep PDs current and accurate.
- (5) Ensure all employees review and concur with the accuracy of their PDs.
- (6) Coordinate personnel actions with the servicing CPAC to understand and apply FLSA provisions.

c. TRADOC supervisors and managers will-

(1) Adhere to the FLSA laws and requirements affecting employees when assigning or allowing overtime work. See Appendix B for guidance on discretion and independent judgment and appendix C for key impacts of the FLSA on overtime work and compensation.

(2) Ensure all PDs are current and accurate. Clearly identify and document the amount of discretion and degree of independent judgment in PDs that employees have when making decisions, impacting their FLSA status.

(3) Be aware of the definition of “suffer or permit” and the key differences in overtime provisions for exempt and nonexempt FLSA employees and act appropriately, when assigning or allowing overtime work.

d. TRADOC civilian employees will-

(1) Ensure their designation of non-exempt (covered) or exempt (not covered) by the provisions of the FLSA is correct and the designation is accurately recorded on each Standard Form 50 (Notification of Personnel Action), in block 35.

(2) Ensure their PD is accurate and bring any inaccuracies to the immediate attention of their supervisor and CPAC.

(3) Obtain written approval from their supervisor or management official to whom approval of overtime and compensatory time has been delegated in advance of working any overtime or compensatory time. Obtain written approval immediately thereafter if an emergency situation arises which requires overtime be performed and preapproval is not feasible.

(4) Not work outside scheduled duty hours, including starting work prior to the start of the duty day, continuing to work after duty day, working through scheduled lunch break or otherwise working outside of scheduled duty hours, unless overtime or compensatory time has been approved in advance and in writing by the supervisor or management official to whom approval of overtime or compensatory time has been delegated, except in cases of an emergency when obtaining preapproval is not possible.

(5) Correctly report and record all overtime and compensatory time worked, whether ordered and approved or suffered or permitted into Automated Time Attendance and Production System.

(6) Report to the head of their activity if any supervisor or management official fails to ensure any employee is properly compensated in accordance with the FLSA.

e. TRADOC employees covered by the FLSA (nonexempt) are entitled to overtime compensation for hours worked in excess of 40 hours in a workweek (unless on an alternate work schedule) for all work which management approves or allows to be “suffered or permitted”.-See glossary-for the definition of “suffer or permit”.

5. Records management requirements

In accordance with AR 25-400-2, the records management (recordkeeping) requirements for all record numbers, associated forms, and reports are included in the Army's Records Retention Schedule-Army (RRS-A). Detailed information for all related record numbers are located in the RRS-A at <https://www.arims.army.mil> and appendix D.

Appendix A References

Section I Required Publications

ARs, DA pamphlets, and DA forms are available at <http://www.apd.army.mil>. TRADOC publications and forms are available at <http://www.tradoc.army.mil/publications.htm>.

This section contains no entries.

Section II Related Publications

A related publication is a source of additional information. The user does not have to read a related reference to understand this publication.

This section contains no entries.

Section III Prescribed Forms

This section contains no entries.

Section IV Referenced Forms

This section contains no entries.

Appendix B Determining Fair Labor Standards Act status

B-1. FLSA guidance

Contact your CPAC for assistance in understanding and applying FLSA provisions.

B-2. FLSA coverage

All civilian employees are presumed to be covered by the FLSA, unless an exemption applies. An exempt employee is an employee who is not covered by the minimum wage and overtime provisions of the FLSA. A nonexempt employee is an employee who is covered by the minimum wage and overtime provisions of the FLSA. Every civilian employee is designated as either non-

exempt (covered) or exempt (not covered) by the provisions of the FLSA and the designation is recorded on the Notification of Personnel Action, Standard Form SF-50, Block 35.

B-3. FLSA exemptions

The servicing CPAC, based on guidance from CHRA, is charged with making all FLSA exemption determinations when classifying positions. It is the actual work performed by the employee and not the duties set forth in the employee's position description (PD) that determine the employee's FLSA exemption status. Therefore, it is incumbent on supervisors, managers, and employees to ensure PDs are correct and any inaccuracies are communicated to the servicing CPAC, so appropriate FLSA determinations can be made. The servicing CPAC may determine an employee who is employed in a bona fide executive, administrative, or professional capacity is exempt from the FLSA.

a. Executive exemption. Generally, an employee will qualify for the executive exemption only if the employee's primary duty is management of a Federal agency or a subdivision thereof, the employee customarily and regularly directs the work of two or more other employees, and the employee has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees, are given particular weight.

b. Professional exemption. To qualify for the professional exemption, an employee's primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

c. Administrative exemption. The most frequently used exemption for non-supervisory employees is the administrative exemption. To qualify for the administrative exemption, the employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations, as distinguished from production functions, of the employer or the employer's customers and must include the exercise of discretion and independent judgment with respect to matters of significance.

B-4. Discretion and independent judgment

The exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. Discretion and independent judgment is defined as more than the use of skill in applying well-established techniques, procedures, or specific standards described in manuals or other sources.

a. Supervisors must keep in mind that discretion and independent judgment applies to work actually performed and not just work described in the employee's PD.

b. Supervisors will consider the following factors when determining whether an employee exercises discretion and independent judgment with respect to matters of significance, including, but not limited to, whether the employee:

- (1) Has authority to formulate, affect, interpret, or implement management policies or operating practices.
 - (2) Carries out major assignments in conducting the operations of the organization.
 - (3) Performs work that affects the organization's operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the organization.
 - (4) Has authority to commit the organization in matters that have significant financial impact.
 - (5) Has authority to waive or deviate from established policies and procedures without prior approval.
 - (6) Has authority to negotiate and bind the organization on significant matters.
 - (7) Provides consultation or expert advice to management.
 - (8) Is involved in planning long- or short-term organizational objectives.
 - (9) Investigates and resolves matters of significance on behalf of management.
 - (10) Represents the organization in handling complaints, arbitrating disputes, or resolving grievances.
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Appendix C
Overtime work compensation

C. Overtime work compensation

See table C, for differences in compensation and premium pay entitlements for employees covered by FLSA and those exempt from FLSA.

Table C
Overtime work compensation

	Covered by the FLSA (nonexempt)	Exempt from the FLSA (exempt)
Basics	FLSA grants overtime for “hours of work” in excess of either an employee’s daily tour of duty or in excess of 40 hours in the weekly tour of duty (unless on an AWS). All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency are “hours of work.” Such time includes all time during which an employee is required to be on duty; time during which an employee is suffered or permitted to work; and waiting time or idle time which is under the control of an agency and which is for the benefit of an agency.	Title 5 grants overtime to full-time, part-time or intermittent work schedule employees when work is officially ordered and approved in excess of 8 hours in a day or 40 hours in an administrative workweek.
Overtime rate	The rate at which employees are paid overtime is at a rate equal to one and a half times the employee's hourly regular rate of pay.	For an employee whose basic pay does not exceed GS-10 step one, the overtime hourly rate of pay is generally equal to one and one-half times the hourly rate of basic pay of the employee. For an employee whose basic pay exceeds GS-10, step one, the overtime hourly rate of pay is generally equal to the greater of one and one-half times the GS-10, step one hourly rate or the hourly rate of basic pay for the employee.
Compensation Requirements	Must be compensated for all hours of work they perform that is "suffered or permitted" to occur by management. Overtime work by FLSA-covered employees is "suffered or permitted" if: (1) The employee performs work that was neither ordered nor approved in advance by management; (2) Management is aware that the employee is performing the work and (3) Management fails to act in a reasonable time to stop the employee from performing the work.	Overtime work hours must be ordered and approved in order to be compensable. This approval must be in writing by an officer or employee to whom authority has been specifically delegated.

Table C
Overtime work compensation, cont.

	Covered by the FLSA (nonexempt)	Exempt from the FLSA (exempt)
Compensatory time	Granted at THE REQUEST of the employee in lieu of overtime pay for irregular or occasional overtime work. Management may not require the employee to accept compensatory time in lieu of overtime pay under any circumstances.	May be granted at the request of the employee for irregular or occasional overtime work. Management may require an employee whose rate of basic pay exceeds the maximum rate for GS-10 to accept compensatory time (instead of overtime pay) for irregular or occasional overtime work.
Compensatory time for travel	The compensatory time off for travel provision applies to an employee without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair Labor Standards Act of 1938. Compensatory time off for travel may only be earned for time in a travel status when such time is not otherwise "compensable."	

Appendix D
Records management

D. Records management

See table D, for RRS-A record information associated with this publication.

Table D
Records Retention Schedule-Army record information

Record number (RN)	Record title	Record disposition	Privacy Act record
1aa4	Office supervisory or manager employee records -Current employee	See ARIMS disposition for RN 1aa4	Yes
1x2	Civilian personnel time and attendance files - OPM 71 or equivalent: If timecard has been initialed by employee	See ARIMS disposition for RN 1x2	Yes
1x3	Civilian personnel time and attendance files - OPM 71 or equivalent: If timecard has not been initialed by employee	See ARIMS disposition for RN 1x3	Yes

Glossary

Section I Abbreviations

CHRA	U.S. Army Civilian Human Resources Agency
CPAC	civilian personnel advisory center
FLSA	Fair Labor Standards Act
GS	general schedule
PD	position description
TRADOC	U.S. Army Training and Doctrine Command

Section II Terms

“Suffer or permit” work

Work performed by an employee for the benefit of an agency, whether requested or not, appropriately approved or not, when the employee’s supervisor accepts the benefits of that performed work.

Section III Special Abbreviations and Terms

This section contains no entries.