


U.S. Department of Homeland Security
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Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

JUL 21 2014

MEMORANDUM FOR: All U.S. Immigration and Customs Enforcement Supervisors

FROM: Thomas S. Winkowski 
Principal Deputy Assistant Secretary

SUBJECT: Administratively Uncontrollable Overtime Guidance

As a result of the often demanding and unpredictable nature of our work as a law enforcement agency, Congress provides certain law enforcement officers with an additional premium to the basic compensation package in the form of Administratively Uncontrollable Overtime (AUO). As stewards of public funds, it is every employee's responsibility to ensure that Agency funds are used in a manner that is consistent with law, regulation, and policy.

The purpose of this guidance memorandum is to remind U.S. Immigration and Customs Enforcement (ICE) supervisors of their responsibility to review the accuracy of their subordinates' time and attendance records, specifically with regard to AUO. The administration of overtime compensation is a key management function and supervisors must understand and comply with the laws governing AUO.

The objective of AUO is to compensate employees occupying positions in which the hours of duty cannot be controlled administratively and that require substantial amounts of irregular or occasional overtime work. Further, the employee is generally responsible for recognizing circumstances that require him or her to remain on duty. The ICE Office of Human Capital (OHC) is responsible for determining whether a position qualifies for AUO, based on the duties and responsibilities found in the position description.

In order for a position to qualify for AUO, there must be circumstances requiring an employee to "remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of [the employee's] duties, and of such a nature that failure to carry on would constitute negligence." 5 C.F.R. § 550.153(c)(2). The circumstances that require the employee to remain on duty must be such that the "employee has no choice as to when or where [the employee] may perform the work when he [or she] remains on duty in continuation of a full daily tour of duty." *Id.* at 550.153(d)(2).

Circumstances justifying authorization for AUO differ "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." 5 C.F.R. § 550.153(d)(2). The regulations also provide that AUO is not justified where "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." *Id.*

Once a position is approved for AUO by OHC, supervisors are responsible for certifying AUO for individual employees, at the appropriate percentage rate. In addition, supervisors are responsible for continuing to monitor whether certified subordinates are actually performing duties that justify AUO. There are certain types of circumstances that may justify the need for "administratively uncontrollable" irregular or occasional overtime that AUO is intended to address. These circumstances include, but are not limited to:

- Remaining on duty at a detention facility due to an unexpected facility incident, such as a demonstration, hunger strike, riot, or escape;
- Responding to an electronic monitoring alert received outside of an officer's scheduled tour of duty, where response is necessary to prevent an enforcement priority from absconding;
- Processing the release of an alien based on special criteria, such as health or humanitarian concerns, lack of bed space, or other Field Office Director-directed releases;
- Conducting interviews of aliens in various locations to determine alienage;
- Participating in surveillance activities, where the duty hours are dependent on the activities of the criminal subject;
- Transporting, installing, and monitoring surveillance equipment, including emergent repair of equipment during ongoing investigative activities;
- Remaining on duty to process a bond for an alien's release from custody;
- Searching for an alien who has received a final order of deportation or exclusion and has failed to surrender, where the officer must shadow known associates outside of the regular tour of duty; and
- Remaining on duty to adjudicate and submit a claim of U.S. citizenship within the mandatory 24-hour period, in order to minimize the subject's time in detention.

Although AUO is the exclusive method of payment for all "irregular or occasional" overtime worked by employees certified for AUO, supervisors should ensure that employees claiming irregular or occasional overtime do so for the efficiency of the Agency, as opposed to the personal convenience of the employee or the purpose of accruing hours.

Supervisors are responsible for reviewing Records of AUO and Overtime Hours Worked to confirm that justifications evidence irregular and occasional overtime that is consistent with the purposes of AUO. This responsibility includes monitoring the justifications provided by subordinate supervisors. AUO is not intended to address administrative or clerical duties that can easily be scheduled in advance of the administrative workweek or performed during a regular shift, and supervisors should work with employees to ensure that such administrative or clerical duties are completed during an employee's scheduled tour of duty whenever possible.

Where it is not operationally necessary to perform a duty outside of the employee's regular tour of duty, and the duty can be performed during the employee's next tour of duty, it cannot be used to justify AUO. Certain administrative or clerical duties can easily be scheduled in advance of the administrative workweek or performed during the employee's regular tour of duty. Examples of these duties include, but are not limited to:

- Participating in training, whether in person or virtually;
- Conducting training activities or preparing training materials;

- Preparing administrative or clerical documents, such as travel authorizations, Time and Attendance sheets, or Performance Work Plans;
- Completing paperwork with no urgent deadline;
- Taking a government-owned vehicle in for regularly-scheduled maintenance; and
- Quarterly firearm qualification.

Supervisors must reject those AUO records that contain insufficient justifications, and will be held responsible if they approve records that are improper. Supervisors should not approve AUO justifications that fail to sufficiently describe the basis for the overtime (i.e., vague descriptions like "File Review" or "Supervisory Detention and Deportation Officer duties"). Furthermore, supervisors are responsible for identifying employees who consistently provide justifications that appear administrative in nature or suggest a pattern of overtime performed for the purpose of accruing hours or for the benefit of the employee, rather than operational considerations. In such instances, supervisors, in consultation with OHC, must assess whether decertification of that employee's AUO is necessary to remain consistent with law and regulation.

The Office of Human Capital has issued the attached Premium Pay Guide, which provides detailed guidance on the different forms of premium pay, to include AUO.

As you may know, due to allegations of AUO abuse, the Department of Homeland Security's AUO practices have been the subject of considerable internal and external scrutiny. Some of our existing AUO policies and procedures are dated and were developed before the creation of the department. For these reasons, DHS and ICE are carefully reviewing all AUO practices to ensure compliance with the law. As these reviews continue, management will keep you apprised of developments, including any superseding guidance regarding AUO.

I appreciate your continued efforts to ensure that ICE's compensation practices are fair and consistent with the law. I am confident that together we can promote a culture of compliance that appropriately compensates employees for their hard work and diligence in protecting the homeland.

Encl.

ICE Premium Pay Guide

ACKNOWLEDGMENT OF RECEIPT

Please sign this acknowledgment as evidence that you have received the cited memorandum. Your acknowledgement of receipt should be returned to the bearer of this notice.

I acknowledge receipt of the Administratively Uncontrollable Overtime Guidance.

Employee's name: _____ Date: _____

Employee's signature: _____ Date: _____

Witness/Bearer's signature: _____ Date: _____