
State of Oregon LEGISLATIVE BRANCH PERSONNEL RULES

Legislative Branch Personnel Rule 4: Compensation and Salary Administration

APPLICABILITY: This rule applies to all employees of Legislative Branch and does not legislative agencies and parliamentary offices, except that: Subsections (3)(e) and (12) of this rule apply to all Legislative Branch employees who are not apply to members of the Legislative Assembly, unless noted otherwise. Subsections (1), (3)(a), (4)(a), (5), (6), (10), (11), (12)(a)(b)(d)(e), (13), (14)(a) and (19) of this rule apply to temporary status employees.; Subsection (15) of this rule applies to members of the Legislative Assembly and all Legislative Branch employees; and Subsections (1) to (14) and (16) of this rule do not apply to temporary status employees.

(1) **Purpose.** The purpose of this rule is to provide an equitable compensation plan system for is to provide a uniform system for establishing and assigning salary levels and administering pay to recruit and retain a high-quality workforce. Any salary based decision an employee or appointing authority believes is inequitable may be appealed as outlined in subsections (6) or (7) of this rule.

(2) Preparation of compensation plan.

(a) Each compensation plan shall comply with the equal pay and salary history requirements of ORS 652.220 and 659A.357.

(b) For each class of work, a minimum and maximum pay ~~rangerate, and intermediate rates as necessary,~~ shall be established. ~~The rates assigned to each class must reflecting~~ the differences in the duties, authorities and responsibilities of the class.

~~(2)(c)~~ Each compensation plan must be based on market data, to the extent the data is available. Data considered as part of compensation analysis may include, but need not be limited to, rates paid by other public and private employers for comparable work. An employee may not be hired at less than minimum wage. ; Legislative Branch policies and financial conditions, unusual recruitment and retention circumstances and other relevant salary and economic data.

(3) Salary administration - general.

(a) ~~Entrance salary hiring range~~New hire. ~~An employee may not be hired at less than the current Oregon minimum wage.~~

(A) A prospective employee shall not be asked about current or past salary history at any time during the hiring process.

(B) A prospective employee may not be initially offered compensation based on current or past compensation. An employee shall be appointed at a rate that complies with the equal pay requirements of ORS 652.220 and 659A.357.

(C) Employee Services shall complete an equal pay analysis within two business days after a request is received.

(D) An offer including salary shall not be extended until Employee Services completes the equal pay analysis.

(b) Hiring bonus. With the approval of the appointing authority and after Employee Services completes an equal pay analysis, agency head or parliamentarian, a lump sum payment may be given to an employee at the time of hiring, promotion or lateral transfer when there is a difficult recruitment situation and the payment is needed ~~in order~~ to fill the position. Documentation of the specifics of the payment must be retained in the recruitment file or, if hired, the employee's personnel record.

(c) Introductory period.

(A) During an introductory period, an employee is trained and oriented to the employee's position in the Legislative Branch. In general, an employee is not eligible for a raise ~~or promotion~~ during an introductory period. An introductory period lasts for six months but may be extended by the appointing authority.

(B) After completion of an introductory period, an employee normally receives appointing authority shall review the performance of an employee and may authorize a minimum a one-step salary increase within the employee's salary range if the increase would as long as the increase does not cause the employee's salary to exceed the maximum rate ~~for in~~ the range. ~~Any step increase awarded upon the completion of an employee's introductory period is entirely at the discretion of the appointing authority. If granted, t~~The increase becomes effective on the first day of the month following successful completion of the introductory period. The salary eligibility date is one year after the employee's most recent increase.

(C) If an appointing authority extends an introductory period due to performance issues, the employee may not receive a step increase unless and until the employee's performance is satisfactory.

(D) An appointing authority must provide the employee with performance feedback prior to denying any step increase and document the feedback in the employee's personnel record.

(E) An appointing authority shall not withhold a salary increase due to budgetary reasons unless a branch-wide salary freeze is in effect.

~~(B)~~

(d) Annual merit increase.

(A) A~~The appointing authority of a~~ limited duration status employee or an employee in a continuing status position ~~may grant, postpone or deny~~ normally receives an annual one-step merit increase ~~to the employee~~ on the employee's salary eligibility date ~~if when~~ the employee's base rate of pay does not equal or exceed the maximum rate for the employee's salary range. ~~If awarded, an annual merit increase is one step.~~

(A)(B) If an appointing authority postpones or denies a merit step increase, the appointing authority must provide the employee with performance feedback prior to postponing or denying any step increase and document the feedback in the employee's personnel record.

~~(B)(C)~~ At any time during the year following the postponement or denial of an annual merit increase, the appointing authority may grant the increase. ~~Withholding Postponing or denying of~~ an annual merit increase does not change an employee's salary eligibility date.

(e) Promotional increases.

~~(C)(A)~~ Upon promotion, an employee ~~may normally~~ receives an increase in pay equivalent to one step, unless additional steps are required to compensate the employee at the first step of the new classification or an equal pay analysis indicates a higher rate of pay not to exceed the maximum rate of pay. All equal pay analysis documentation shall be retained in the employee's personnel record for the established rate of pay to which the employee is promoted.

~~(D) Under unusual circumstances and after consultation with the Human Resources Director, an employee may be offered an increase in pay beyond the first step of the new range. Unusual circumstances include, but are not limited to, the employee's education or experience that will substantially enhance the employee's immediate contribution, and the existence of documented unusual or difficult recruitment conditions. Such an increase may not cause the employee's new base rate of pay, excluding differentials, to exceed the maximum rate of pay for the higher level classification. The appointing authority shall inform the Human Resources Director of the increase and document and retain the reasons for granting the increase.~~

~~(E)(B)~~ An employee who is promoted may receive a step increase six months following the effective date of the promotional introductory period. The salary eligibility date for the annual merit increase is one year after the promotional increase.

(f) Merit bonus.

(A) With the approval of the appointing authority and Employee Services, a lump sum payment or the equivalent amount of leave may be given to a current, eligible employee when the employee's performance rating exceeds expectations and meets the following criteria:

- (i) Payment by results;
- (ii) Longevity;
- (iii) Special assignment;
- (iv) Achieved special job-related skills;
- (v) Training or education;
- (vi) Extensive hours; or
- (vii) Extensive travel.

(B) Lump sum payments or equivalent administrative leave may only be given one time in a calendar year beginning January 1 and going through December 31. The employee must be employed for at least six months or employed through a long session (February through June) to be eligible. The amount shall not exceed one month of an eligible employee's gross monthly salary or equivalent amount of administrative leave. Necessary justification documentation is maintained in the employee's record.

~~(e)(g)~~ Special salary adjustments.

~~(A) Recognition.~~ An agency head or parliamentarian appointing authority may grant a one-step special salary adjustment, up to the salary range maximum, to any employee who is not in a temporary ~~or limited duration status~~ position, who has completed six months of

employment and, if applicable, who has completed six months of the current introductory period.

An equal pay analysis must be completed by Employee Services prior to granting the special salary adjustment.

—————(B) A special salary adjustment is to be reserved for truly exemplary performance or for uniquely compelling circumstances. An ~~agency head or~~ parliamentarian appointing authority who wishes to grant a special salary adjustment to an employee must submit, for inclusion in the employee's ~~official~~ personnel record file, written justification that clearly demonstrates how this expenditure is equitable and in the best interest of the Legislative Branch.

—————(C) An employee may receive no more than one ~~recognition special~~ salary adjustment in any 12-month period. Such an adjustment does not affect an employee's salary eligibility date.

~~(i) An agency head or parliamentarian may grant a special recognition bonus for truly exemplary performance or under uniquely compelling circumstances. An employee may receive only one special recognition bonus in any 12-month period and may not receive a special recognition bonus in the same 12-month period in which the employee received a special salary adjustment under this rule.~~

—————(B) Retention.

~~(i) An appointing authority may grant a special salary adjustment up to the maximum of the employee's salary range to retain any employee who is not in a temporary or limited duration status position and who holds a mission-critical position. The employee must present to the appointing authority a bona fide employment offer that does not originate from the Legislative Branch. The employee may be required by the agency head or parliamentarian to sign a legally binding agreement not to resign from the Legislative Branch for up to one year from the date of the adjustment.~~

~~(ii) The appointing authority must produce a report with written justification defining the terms of the employee's external employment offer and demonstrating the mission-critical nature of the position held by the employee for whom a special salary adjustment is to be granted. This report, along with the signed agreement to remain, if any, shall be placed in the employee's official personnel file.~~

~~(iii) An employee may receive no more than one retention adjustment in any salary range. An adjustment does not affect an employee's salary eligibility date.~~

~~(B)(h)~~ Salary eligibility date. For each period of leave without pay that is in excess of 15 consecutive calendar days, the employee's recognized service date shall be permanently adjusted by adding to the salary eligibility date the number of calendar days absent, thereby making the eligibility date later than it would have been if leave without pay had not been taken. This subsection does not apply to ~~unpaid leave authorized under LBPR 15~~ statutorily protected leave.

~~(C) An employee shall normally be appointed at a step that is in the bottom half of the salary range for a class.~~

~~(D) An appointing authority may hire an applicant at up to the top step in the salary range for a class if:~~

~~(i) The applicant's current or most recent relevant salary and benefits are higher than the Legislative Branch's first step;~~

- ~~(ii) The applicant brings education or experience to the job that will substantially enhance the employee's immediate contribution; or~~
- ~~(iii) Unusual or difficult recruitment conditions exist.~~
- ~~(E) The appointing authority shall document and retain the reasons for hiring above the bottom half of the applicable class.~~

(4) Salary administration – misc.

~~(f) (a) Part-time employees. Any employee hired to work less than full time (40 hours per week) is a part-time employee. A part-time employee may be scheduled to work any percentage of full-time work if the percentage is a whole percent and does not total more than 100%.~~

~~(A) A part-time employee may not be hired at less than the current Oregon minimum wage.~~

~~(B) Any employee hired to work less than full time (40 hours per week) is a part-time employee. A part-time employee may be scheduled to work for only one of the following percentages of full-time work:~~

~~(i) 20 percent;~~

~~(ii) 25 percent;~~

~~(iii) 40 percent;~~

~~(iv) 50 percent;~~

~~(v) 60 percent;~~

~~(vi) 75 percent;~~

~~(vii) 80 percent;~~

~~(viii) 90 percent; or (ix) 95 percent.~~

~~(b) Transfer. When an employee transfers from one position to another position from the Legislative, Judicial or Executive Branch in the same or comparable classification or a classification having the same or comparable salary range, the employee's base rate of pay remains the same. Employee Services will help determine comparable salary range when an employee transfers from another branch. The employee's status and salary eligibility date are not affected unless the employee serves an introductory period. If the employee serves an introductory period and is granted a step increase at the end of the introductory period, the employee's salary eligibility date is set one year thereafter.~~

~~(c) Reclassification.~~

~~(A) Upward.~~

~~(ix)(i) Except as described below, when an employee's position is reclassified to a higher classification, the employee may receive an increase from the employee's base rate of pay to a rate in the salary range to which the employee is reclassified. The employee's status is not affected. The employee's salary eligibility date is not affected by the reclassification.~~

~~(ii)~~

~~(x)(iii) Under unusual circumstances, as documented through an internal equal-pay analysis, an appointing authority may, in consultation with Employee Services, grant an additional step upon upward reclassification. Unusual circumstances include, but are not limited to, an employee's scheduled salary eligibility date closely following the effective date of the upward reclassification, or the employee having received a differential for a substantial duration that will no longer continue after the upward reclassification. Such an increase may not cause the employee's new base rate of pay to exceed the maximum rate of the higher-level classification. The appointing~~

~~authority shall report the increase to the Human Resources Director and document and retain the reasons for granting such an increase~~Necessary justification documentation is maintained in the employee's record.

~~(B)~~ Downward. When an employee's position is reclassified to a lower classification, the employee's base rate of pay ~~and status are is~~ not affected. If the employee's base rate of pay is higher than the maximum rate of pay for the class to which the employee is reclassified, the employee shall be red-circled. If the employee's base rate of pay is lower than the maximum rate for the class to which the employee is reclassified, the employee's salary eligibility date is not affected.

(d) Demotion.

(A) Voluntary demotion.

(i) When a regular status ~~employee~~ or a limited duration status employee requests and is granted demotion to a classification having a lower salary range, the employee's base rate of pay shall be decreased to a rate within the salary range of the lower classification. The employee's salary eligibility date shall not be affected. However, if the employee's base rate of pay is above the maximum rate for the lower salary range, the employee's base rate of pay shall be decreased to the maximum rate of the lower salary range, and the month and day of the employee's salary eligibility date shall be maintained. The employee's status is not affected.

(ii) When an employee who has been promoted and is on a promotional introductory period requests and is granted demotion back to the employee's prior classification, the appointing authority shall reduce the employee's base rate of pay to the step in the salary range that the employee was at prior to promotion. The month and day of the employee's prior salary eligibility date shall be restored, and the employee shall receive the annual increase the employee would have otherwise received, if any, but for the promotion. The employee's status returns to what it was prior to promotion.

(iii) When an employee in an initial introductory period, or a limited duration status employee who has been employed for less than one year, requests ~~and is granted a~~ demotion to a classification having a lower salary range, the appointing authority shall adjust the employee's base rate of pay, not including differentials, to the lower salary range and may adjust the employee's base rate of pay to any rate of pay within that salary range that is ~~equitable and~~ equal to or lower than the employee's base rate of pay prior to demotion. The employee's salary eligibility date is not affected, provided the employee's base rate of pay does not equal the maximum rate of the lower salary range. The employee's status is not affected.

~~(C)~~~~(B)~~ Involuntary demotion. When an employee is involuntarily demoted, the appointing authority shall adjust the employee's salary range to the salary range for the position to which the employee is demoted and ~~may adjust~~ the employee's base rate of pay to any ~~equitable~~ step within that salary range. The employee's status ~~and salary eligibility date are~~ is not affected. ~~The employee's salary eligibility date is not affected provided the employee's base rate of pay does not equal the maximum rate within the lower salary range.~~

~~(D)~~~~(C)~~ Employee Services must complete an equal pay ~~assessment~~ analysis which may warrant a higher pay rate within the range. Equal pay ~~assessment~~ analysis documentation is retained in the employee's personnel record.

(e) Rehire. Upon rehire, an employee's base rate of pay, not including differentials, shall be determined after an equal pay assessment analysis by Employee Services is complete. Equal pay assessment analysis documentation is retained in the employee's personnel record by the appointing authority in accordance with this subsection.

(f) Red-circled employees. The base rate of pay of an employee who becomes red-circled may not be increased, including cost of living increases, until the salary amount being paid is within the salary range established for the position. An employee with a red-circled status is not considered to have received a reduction in the employee's level of compensation for purposes of complying with the equal pay provisions under ORS 652.220.

(g) Market salary review.

(A) Every three years, beginning in 2023, a branch-wide market study will be done comparing the branch salaries against the current market.

(B) After review of the results by Employees Services and the appointing authorities, recommendations shall be presented to LAC or its designee for an implementation decision.

(C) No employee's salary will be reduced as a result of the review.

(5) Equal pay analysis.

(a) The Legislative Branch performs an equal pay analysis, as defined in ORS 652.210, at the times and with the frequency to ensure compliance with ORS 652.220 and other laws that prohibit wage discrimination. Notwithstanding any other provision of this rule, the Legislative Branch shall pay wages in conformance with the most recent equal pay analysis.

(A) Any necessary adjustments will be effective on the date the equal pay analysis was complete.

(B) An employee's pay shall not be reduced as a result of the analysis.

(b) **Equity adjustment.** An employee or appointing authority may provide Employee Services with a written request, on a case-by-case basis, to conduct an equity adjustment review. Written appeals to an equity adjustment decision may be made in accordance with sections (6) or (7) below.

(6) Equal pay appeal – employees.

(a) An employee may appeal any salary-based decision if the employee believes their pay is inequitable as follows:

(A) An employee may make a written appeal to the employee's appointing authority and Employee Services within 60 calendar days after receipt of any equal pay analysis results. The employee's written appeal shall identify all factors outlined in ORS 650.220(2) the employee believes were not properly considered and include all supporting documentation, if any.

(B) Employee Services shall respond in writing to the employee's appeal within 30 calendar days from receipt of the written appeal and all necessary information and documentation.

(C) The parties may agree to extensions of time from the process outlined in this section upon written mutual agreement.

(D) All documentation shall be retained with the employee's personnel record.

(E) Any salary adjustments shall be effective on the first day of the month following the decision.

(b) The appeal shall only relate to the employee's own salary. An employee cannot appeal on behalf of or because of decisions made on another employee's salary.

(c) No part of the appeal process precludes an employee from submitting a claim to the Bureau of Labor & Industries in accordance with BOLI's administrative rules or pursuing other legal recourse.

(7) Equal pay appeal – appointing authority.

(a) An appointing authority may appeal any salary-based decision made by Employee Services if the appointing authority feels the pay decision is inequitable as follows:

(A) An appointing authority may make a written request for reconsideration to Employee Services within 30 calendar days after receipt of any equal pay analysis results. The appointing authority's request for reconsideration shall identify all factors outlined in ORS 650.220(2) the appointing authority believes were not properly considered and include all supporting documentation, if any.

(B) Employee Services shall respond in writing to the appointing authority's request within 30 calendar days from receipt of the written request and all necessary information and documentation.

(C) All appeal documentation shall be retained with the employee's personnel record.

(b) If the appointing authority believes the reconsideration decision is inequitable, an appointing authority may appeal the reconsideration as follows:

(A) Within 60 calendar days of the response to the request for reconsideration, an appointing authority may file a formal appeal with the Legislative Administrator:

(i) If the appeal concerns nonpartisan staff, appoint an appeals panel consisting of at least three agency heads or parliamentarians, including the administrator who shall serve as the appeals panel chair. The agency head or parliamentarian who is the appellant may not serve on the appeals panel.

(ii) If the appeal concerns partisan staff, the appeal is forwarded to the Senate or House majority and minority leaders. Each leader shall appoint one member of their caucus to serve on the appeals panel. If a leader is the appellant, the deputy leader of that caucus shall make the appointment and the appellant may not serve on the appeals panel. The member of the appeals panel who is the same caucus as the appellant shall serve as the appeals panel chair.

(B) Within 30 calendar days of receipt of the appeal, the panel shall schedule a time to review the appeal and supporting documentation and decide the appeal.

(C) The panel shall provide a written response to the appointing authority no more than 90 calendar days from receipt of the written appeal.

(D) The parties may agree to extensions of time from the process outlined in this section upon written mutual agreement.

(E) All appeal documentation shall be retained with the employee's personnel record.

(c) No part of the appeal process precludes an employee from submitting a claim to the Bureau of Labor & Industries in accordance with BOLI's administrative rules or pursuing other legal recourse.

(8) Compensation plan changes. The Legislative Administration Committee (LAC) may, at -such times as LAC deems appropriate and subject to the availability of resources, adjust the compensation

plan and set the effective date. LAC may designate to the presiding officers the authority to grant changes to the compensation plan, including branch-wide changes. The designation must be in writing, with an effective and expiration date and be filed with Employee Services.

~~Changes in the compensation plan are effective on the date specified by the presiding officers. All compensation plan changes are subject to availability of funding.~~

(9) Moving expenses. An appointing authority may reimburse actual moving expenses for a newly hired employee, not to exceed a total of \$520,000. The appointing authority shall require receipts for any reimbursement requests above \$5,000. A condition of moving expense reimbursement is agreement to repay any moving expense reimbursement in an amount equal to the amount of moving expenses reimbursed multiplied by the percentage of the 24-month commitment not served by the employee. The employee is not responsible for repayment of moving expense reimbursement if the employee is terminated at the discretion of the appointing authority under terms of at-will employment. The employee shall be notified that all or part of any moving expenses may be considered taxable income by the Internal Revenue Service. Legislative Administration shall report the reimbursements on the employee's Form W-2. Employees are encouraged to consult a tax professional on advice on their own tax liabilities and allowable tax deductions.

~~(9) Branch-wide changes to compensation plan. The presiding officers may, at such times as the presiding officers deem appropriate and subject to the availability of resources, adjust the compensation plan. Adjustments may be made in each step of each salary range and may not result in employee movement from one step to another. All employees who are on step are eligible for adjustment of steps. Employees that are off step will receive a salary adjustment only at the request of the appointing authority via personnel action.~~

(10) Partial pay period. If an employee works less than a full calendar month in a pay period due to hire, termination or leave without pay, the employee's pay for that month shall be computed on a prorated basis using the number of available work hours, based on the employee's schedule, in that month.

~~(10)~~

(11) Partial day absences. An employee ~~who is not eligible for overtime must use~~ shall request the use of appropriate accrued leave for a partial day absences. If the employee does not have sufficient, appropriate accrued paid leave accrued to cover the absence, the appointing authority may ~~not reduce the employee's salary for that portion of the partial day absence not covered by paid leave~~ authorize leave without pay.

(12) Overtime.

~~(11) —~~

Overtime. ~~(a)~~ Employee Services shall determine the overtime eligibility for each position based on either the United States Department of Labor or the Bureau of Labor and Industries' criteria, where applicable.

(b) Employees are eligible for overtime when:

(A) Time worked is in excess of 40 hours in one workweek; or

(B) Time worked in a single workday exceeds 12 hours. In such a case, overtime is calculated and paid only for the time worked in excess of 12 hours in any one workday or in excess of 40 hours worked in one workweek.

(c) Overtime eligible employees who work overtime are eligible, when budget allows, for pay at one and one-half of the employee's rate. If budget does not allow, overtime will accrue as compensatory time at the rate of one and one-half of the employee's rate.

(d) An overtime-eligible employee who performs overtime work without authorization from the employee's supervisor may be subject to discipline. Even if the time worked is unauthorized, an overtime-eligible employee will be compensated for any overtime worked in the manner outlined in paragraph (b) of this subsection.

(e) Volunteering. An appointing authority may not allow an employee who is overtime eligible and who has worked 40 hours in a workweek to perform work that is the same or similar to the employee's regularly assigned duties on a volunteer basis. Work performed by an overtime-eligible employee during a workweek in which the employee has worked 40 hours is considered time worked for purposes of computing overtime.

~~a. — Authorization. Overtime eligible employees are eligible for overtime when:~~

~~i. Time worked is in excess of 40 hours in one workweek; or~~

~~ii. Time worked in a single workday exceeds 12 hours. In such a case, overtime is calculated and paid only for the time worked in excess of 12 hours in any one workday or in excess of 40 hours worked in one workweek.~~

~~b. — Unauthorized overtime. An overtime-eligible employee who performs overtime work without authorization from the employee's supervisor may be subject to discipline.~~

~~c. Volunteering. An appointing authority may not allow an employee who is overtime eligible and who has worked 40 hours in a workweek to perform work that is the same or similar to the employee's regularly assigned duties on a volunteer basis. Such voluntary work performed by an overtime-eligible employee during a workweek in which the employee has worked 40 hours is considered time worked for purposes of computing overtime.~~

(13) Eligibility. All employees of the legislative~~Legislative Branch, agencies and parliamentary offices,~~ other than legislative librarian positions, are exempt from the Fair Labor Standards Act (FLSA). The state of Oregon's wage and hour laws are applicable to positions in the Legislative Branch entitled to the payment of overtime as determined by Employee Services and as outlined in subsection (12) of this rule. ~~Some positions are treated under these rules as overtime eligible, as determined using FLSA criteria. The employees in these positions are eligible for overtime.~~

(14) Recording and compensation.

(a) In the case of overtime-eligible employees, all time worked must be recorded on the employee's timesheet. Overtime is compensated at the rate of one and one-half times the employee's regular hourly rate of pay, as defined by the Bureau of Labor and Industries, at the time the overtime is worked. For the purpose of calculating overtime, accrued paid leave that is used is not considered as time worked, but a paid holiday that is taken off is considered as time worked.

~~(a)~~ (b) An ~~agency head or parliamentarian~~appointing authority may elect to compensate overtime-eligible employees by cash ~~pp~~ayment or by compensatory time. An employee may accrue a maximum of 240 hours of ~~co~~mpensatory time. An employee who has accrued 240 hours of compensatory time and who works overtime must receive cash payment for the overtime worked in excess of 240 hours.

(15) Use of compensatory time.

(a) In the case of overtime-eligible employees, compensatory time is available for use any time following the workday in which it is earned. The use of compensatory time may be requested by the employee or may be required by the appointing authority.

~~(a)~~

(b) The use of compensatory time must be scheduled in advance.

~~(b)~~

(c) A supervisor shall grant an overtime-eligible employee's request to use accrued compensatory time unless doing so would unduly disrupt business operations.

~~(e)~~

(d) Compensatory time must be used within 18 months of its accrual. After 18 months, unused compensatory time will be paid to the employee at the employee's current rate of pay.

(16) Compensation and compensatory time at termination. Upon termination of employment, an overtime-eligible employee's unused compensatory time shall be paid at the average regular rate of compensation received by the employee during the last three years of the employee's employment or at the employee's final regular rate of compensation, whichever is higher. In the case of overtime-eligible employees, an employee who terminates employment shall be paid for accrued compensatory time at the employee's regular hourly rate at termination.

(17) Compensation and compensatory time upon transfer or promotion.

(a) When an overtime-eligible employee transfers or is promoted to a different position in the Legislative Branch, the appointing authority for the position being vacated shall pay ~~the employee for~~ all accrued compensatory time earned prior to the effective date of transfer or promotion at the regular hourly pay rate the employee was receiving on the workday prior to transfer or promotion.

~~(a)~~

(b) The appointing authority for the position being filled may, prior to the effective date of the transfer or promotion, agree in writing to allow the employee to retain some or all of the employee's accrued compensatory time, which then becomes the liability of the legislative unit or agency to which the employee is transferring or being promoted.

(18) Compensation and compensatory time before termination. An appointing authority may elect at any time to pay an overtime-eligible employee in cash for all or a portion of compensatory time after such time has been accrued. If an employee is paid for accrued compensatory time before termination, payment shall be made at the employee's regular hourly pay rate at the time of payment.

(19) Second jobs. When an employee applies for a second job within the Legislative Branch:

~~(19)~~ (a) If the employee is working full-time for the first legislative agency or parliamentary office and if the second Legislative Branch position has the same or similar job duties, the second legislative agency or parliamentary office shall be responsible for any overtime pay liability. However, the second agency or office may refuse to hire the employee because of potential overtime pay liability.

~~(b)~~ If the employee is working part time for the first legislative agency or parliamentary office and if the second legislative agency or parliamentary office job has the same or similar duties, the two entities shall consult with Employee Services to determine if the entities mutually agree on the employee's overtime eligibility status and any overtime pay obligation. Unless both entities agree otherwise, the legislative agency or parliamentary office employing the employee at the time the employee exceeds 40 hours in one workweek shall pay any overtime for which the employee is eligible.

~~(b)~~

~~(e)~~ If the second legislative job is unrelated, has different duties or in a different capacity than the employee's regular job and is occasional or sporadic, the second legislative agency or parliamentary office may, depending on the duties, hire the employee without overtime pay liability. As used in this paragraph:

~~(A) —“Different capacity” means employment involving duties that do not fall within the same general occupational category as the employee's regularly assigned duties.~~

~~(B) —“Occasional or sporadic” means infrequent, irregular or occurring in scattered instances.~~

~~(c)~~

Separation of powers.

~~(b) Unlike the United States Constitution, which establishes separation of powers only by implication, the Oregon Constitution contains a specific requirement dividing state government into three separate branches: the Legislative, the Executive and the Judicial. The Oregon Constitution further provides that no person charged with official duties under one of these branches shall exercise any of the functions of another, except as otherwise expressly provided in the Constitution. See Article III, section 1, Oregon Constitution.~~

~~(e) Article III, section 1, prohibits:~~

~~(A) —Employees of one branch from undertaking a duty or function that belongs in another branch;~~

~~(B) —Employees of one branch, in performing a duty appropriate to that branch, from doing so in a way that unduly interferes with the operation of another branch's function; and~~

~~(C) —The same person from simultaneously performing duties as an affiliate of more than one branch.~~

~~(d) Due to Article III, section 1, employees may not work for more than one branch of government simultaneously.~~

(20) Differentials.

(a) Shift differential.

~~(A)~~ (A) Shift differential applies to any employee who is in an overtime-eligible position and whose regularly scheduled workday falls entirely or partially within the hours of 6:00 p.m. and 6:00 a.m. or on Saturday or Sunday. The differential is \$1.00 per hour.

~~(B)~~ The amount of shift differential must be consistent with differentials paid in other branches of state government. Shift differential is applied to the actual time worked between the hours of 6:00 p.m. and 6:00 a.m., or on Saturday or Sunday, and is considered in the calculation of overtime pay.

~~(C)~~ Shift differential may not be computed at the rate of one and one-half the employee's regular rate of pay for a shift occurring on a holiday.

~~(D)~~ Shift differential is not applied to base pay rates for computation of pay during leave with pay.

~~(E)~~ (B) An appointing authority and employee may mutually agree, in advance and in writing, to waive the payment of shift differential. A waiver is ~~permitted~~possible only when an employee requests to work a schedule that would otherwise qualify for payment and the approval is based on the employee's personal preference rather than business need.

(b) Work out of class.

~~(A)~~ (A) Eligibility and rate. Except as described below, an employee assigned in writing to perform duties of an existing, higher-level classification for a period of 10 or more consecutive work days must be compensated for the performance of such duties. The rate of pay for temporary duties at a higher classification is either:

(i) Five percent of the employee's base rate of pay; or

(ii) The difference between the employee's base rate of pay and the first step of the higher (WOC) classification's salary range, whichever is greater. The pay rate may not exceed the top step of the higher level classification. Compensation is generally a temporary one-step salary increase for the period during which the duties are performed. Under unusual circumstances, such as when the employee assumes the full responsibility of a higher level class and a one-step increase is not sufficient to compensate the employee at the minimum rate of the higher level class, and after consultation with the Human Resources Director, an appointing authority may grant more than a one-step increase. The appointing authority shall document and retain the reasons for granting more than a one-step increase. The pay rate of an employee receiving work out of class may not exceed the top step of the higher level classification.

(B) Duration. Work out of class duties may be assigned for a specified period not to exceed one year. An appointing authority may extend a work out of class assignment beyond one year under unusual circumstances.

(C) Waiver. When an employee is assigned higher-level duties that would otherwise qualify for work out of class, the employee and appointing authority may mutually agree to waive the work out of class when the purpose of the assignment is to give the employee the opportunity to learn a higher-level job skill.

~~(C)~~

(c) Lead differential.

(A) An employee may receive a ~~one-step~~five percent lead differential when an appointing authority assigns lead work or team leader duties to that employee for a period of 10 or more consecutive work days. The appointing authority shall consult with ~~the Human Resources Director~~Employee Services prior to authorizing such payment.

(B) Lead differential does not apply to employees whose classifications normally include lead work or team leader duties, or to voluntary training or developmental assignments.

(C) Payment of a lead differential must be designated for a specific lead work or team leader assignment, project or time period as determined by the appointing authority. The employee must be paid for the full period during which the duties are assigned.

(D) When an employee who is receiving a lead differential is temporarily assigned to perform work that qualifies for a work out of class differential, the appointing authority may continue the lead differential for the duration of the work out of class assignment for up to one year.

(E) While this differential is normally ~~one step~~ five percent, the appointing authority, after consultation with Employee Services, may determine ~~that two steps~~ ten percent is warranted when the lead work assignment is significantly larger as a result of factors including, but not limited to:

(i) The number of employees led.

(ii) The number of work units led.

~~(iii)~~ (iii) The complexity of, or differences between, the work unit or units led.

~~(iii)(iv)~~ (iv) — ~~(iv)~~ The number of geographic locations in which the employee is leading staff.

(F) Necessary justification documentation must be maintained in the employee's personnel record ~~The appointing authority shall document and retain the reasons for granting a two-step~~ ten percent lead differential.

(G) As used in this paragraph, "lead work or team leader duties" includes duties where, on a recurring or daily basis, the employee has been assigned the responsibility to perform substantially all of the following functions:

(i) Training or orienting new employees.

(ii) Assigning and reassigning tasks to other employees.

(iii) Giving direction to other employees concerning day-to-day work procedures.

(iv) Communicating established standards of performance to affected employees.

(v) Reviewing the work of other employees to ensure conformance to established standards.

(vi) Providing informal assessment of employees' performance to the supervisor.

~~(G)~~ —

~~ag new employees.~~

~~(ii) Assigning and reassigning tasks to other employees.~~

~~(iii) Giving direction to other employees concerning day-to-day work procedures.~~

~~(iv) Communicating established standards of performance to affected employees.~~

~~(v) Reviewing the work of other employees to ensure conformance to established standards.~~

~~(vi) Providing informal assessment of employees' performance to the supervisor.~~

(d) On-call differential.

(A) When an overtime-eligible employee is required to work times other than the employee's regular, flexible or irregular work schedule in order to perform work before the employee's next regularly scheduled work day, the employee must be compensated with an on-call duty differential.

(B) An overtime-eligible employee who is on-call and available for work need not be subject to restrictions that prevent the employee from using on-call time for the employee's own purposes, but must be available, within 60 minutes of being requested, to consult by telephone or to report promptly for work. On-call duty differential pay may not be applied to base pay rates for computation of pay during leave with pay.

(C) An on-call employee who returns to work when requested shall be paid the on-call differential for a minimum of two hours at the rate of time and one-half. Additional time worked is paid on an hourly basis for each hour or major portion of an hour worked at the rate of time and one-half. As used in this subparagraph, "major portion of an hour" means 30 minutes or more.

(D) On-call duty differential does not apply to employees working in overtime situations or whose flexible or irregular work schedule falls between 5 p.m. and 8 a.m. or on weekends.

~~(D)~~

(e) Short session differential.

(A) Employees brought on to staff short session duties are eligible for a five or ten percent differential.

(B) Short session employees are not eligible for any benefits other than those required by law.

(C) The differential is only available December through April for sessions occurring in even numbered years.

~~(e)(f) The presiding officers LAC or a person designated by LAC may establish any other differential that is , in addition to those listed above, determined by the presiding officers to be necessary in subsection (20) of this rule.~~

(21) Call back.

(a) An overtime-eligible employee who has been released from duty and who must return to the work site to perform work before the employee's next regularly scheduled work day shall be compensated for a minimum of two hours of work. The work may be performed:

(A) At the employee's work site.

(B) At a work site other than the employee's official work site.

(b) Time worked that is a continuation of or immediately preceding an overtime-eligible employee's normal work schedule, that is scheduled in advance or that does not require the employee to physically travel to a work site does not constitute call back. An employee may be called back only by the appointing authority or by the employee's immediate supervisor.

(c) A full-time overtime-eligible employee shall be compensated for call back time in excess of 40 hours in a work week in accordance with subsections ~~(712)~~ to ~~(914)~~ of this rule. A part-time overtime-eligible employee shall be compensated for call back time at straight time and shall be paid at the hourly rate equivalent to the employee's current salary. If a part-time employee's call back time, when combined with the employee's regular hours worked in a work week, exceeds 40 hours,

the work in excess of 40 hours shall be compensated in accordance with subsections (~~7~~12) to (~~9~~14) of this rule.

Approved: ~~1-16-2016~~DRAFT