

State Personnel System



Dual Employment and Dual Compensation Guidelines and Procedures for State Personnel System Agencies

Division of Human Resource
Management

<Insert Effective Date of Rule>

DEPARTMENT OF MANAGEMENT
SERVICES

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INTRODUCTION

In accordance with the provisions of Section 216.262(1)(e), Florida Statutes, the Department of Management Services has delegated to State Personnel System (SPS) agency heads the authority to approve dual employment or dual compensation requests for employees to fill more than a total of one full-time equivalent established position; receive compensation simultaneously from any appropriation other than appropriations for salaries; or receive compensation simultaneously from more than one “state agency”. For the purpose of these guidelines, “state agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government, the judicial branch, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Florida Clerks of Court Operations Corporation, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission.

Accordingly, SPS employees must complete a Dual Employment and Compensation form and receive approval to:

1. Fill more than a total of one full-time equivalent established position.
2. Receive compensation simultaneously from any appropriation other than appropriations for salaries.
3. Receive compensation simultaneously from another “state agency” as defined above.

IMPORTANT:

The SPS is considered a separate employer from the other “state agencies” listed above. Therefore, overtime liability for a dual employment action will only occur in those instances when a SPS employee is receiving dual compensation from one or more SPS agencies.

I. DEFINITIONS

For the purposes of these guidelines and procedures the following definitions apply:

C.F.R. – Code of Federal Regulations

Department – Department of Management Services

Dual Employment or Dual Compensation - Employment in a total of more than one full-time equivalent established position; compensation of an employee simultaneously from any appropriation other than appropriations for salaries; or compensation of an employee simultaneously by more than one “state agency”.

Excluded Work – Duties and responsibilities that are exempt from the payment of overtime for hours worked in excess of 40 hours in a work week. The United States Department of Labor (USDOL) provides information on exemptions in the *FLSA Overtime Security Advisor* (<http://www.dol.gov/elaws/esa/flsa/overtime/menu.htm>).

Fair Labor Standards Act (FLSA) – Federal wage and hour law regulating compensation practices including minimum wage standards, overtime pay standards and child labor restrictions.

Included Work – Duties and responsibilities that, in accordance with the FLSA, require the payment of overtime for hours worked in excess of 40 hours in a workweek or in excess of the established hours in an extended work period.

Occasional and Sporadic Work – Infrequent, irregular work occurring in scattered instances and not within the same general occupational category as the employee’s regular work.

Position – An established Career Service, Selected Exempt Service, Senior Management Service or Other Personal Services (OPS) position.

Primary Employment – The employment with the earliest date of hire. However, OPS employment will be secondary unless both positions are OPS.

Secondary Employment – Simultaneous employment in a position subsequent to the employee’s primary employment.

“State Agency”- Any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government, the judicial branch, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Florida Clerks of Court Operations Corporation, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission as provided in Section 216.0011(1)(qq), F.S.

State Personnel System (SPS) – The employment system comprised of authorized positions within the Career Service, Selected Exempt Service, or Senior Management Service. All state agencies and organizational units thereof with such positions are considered entities of the State Personnel System.

Voluntary Work – Work that is offered freely and without pressure or coercion, direct or implied, from an employer and cannot be the same type of work as the individual's primary employment.

Weighted Average – Average of the primary and secondary salaries calculated on a weekly basis divided by the total number of combined hours worked. The formula for computing the weighted average is indicated below:

Hours worked in the primary employment = HWP
Hours worked in the secondary employment = HWS
Regular hourly rate = RHR (*employee's base rate of pay plus any approved salary additives, incentive payments and non-discretionary bonuses*)
Total number of combined hours worked = TCH

$$\frac{(HWP \times RHR) + (HWS \times RHR)}{TCH}$$

Workweek – Forty hours in a period of seven consecutive days beginning Friday at 12:01 AM and ending on Thursday at midnight.

II. POLICY

The Division of Human Resource Management has implemented the following guidelines and procedures to provide State Personnel System agencies with guidance to effectively manage the dual employment and dual compensation approval process, and to ensure that such actions are in compliance with state law and the federal Fair Labor Standards Act.

- A. Pursuant to Section 216.262(1)(d), F.S., employment in more than one position when the normal hours of work for the positions overlap shall not be approved.
- B. Pursuant to Section 216.262(1)(e), F.S., approval of dual employment or dual compensation is required by "state agencies" for:
 - 1. Employment in more than a total of one full-time established position; or
 - 2. Compensation of an employee simultaneously from any appropriation other than appropriations for salaries (example: OPS appropriations); or
 - 3. Compensation of an employee simultaneously by more than one "state agency".
- C. Approval of dual employment and dual compensation is also required for more than one OPS employment or employment in more than one established part-time position within a "state agency".
- D. The provisions of this guideline do not apply to employment with local governments, state universities or private sector employers.

- E. For the purpose of determining overtime liability, all OPS work is considered to be included with the exception of the following occupations which are excluded from the payment of overtime regardless of the method of payment:
1. Physicians
 2. Attorneys
 3. Teachers
 4. Certain computer related occupations as outlined in 29 C.F.R., Section 541.400, that are compensated at a rate of not less than \$ 27.63 per hour.
- F. The Department of Financial Services, in a further effort to assist agencies in monitoring the dual employment and dual compensation process, will issue the following reports: a report which identifies employees who have more than one salary and/or OPS wage payment on a single payroll, and a report which identifies employees who have salary and/or OPS wage payments on more than one regular payroll within any particular month.

III. PROCEDURES FOR REVIEW AND APPROVAL BY SPS AGENCIES

- A. The primary and secondary state agencies shall review, in advance, all dual employment and dual compensation requests and either approve or disapprove the dual employment or dual compensation request considering the following:
1. A demonstrated need exists for the proposed action, such as:
 - a. The immediate and untimely vacating of a position assigned duties essential to the agency's operation;
 - b. Special skills needed to perform a critical assignment; or
 - c. Recruitment was unsuccessful in filling a critical position.
 2. The dual employment or dual compensation does not violate legislative intent.
 3. Compensation for dual employment is commensurate with assigned duties.
- B. Additionally, if both state agencies are in the SPS consider the following:
1. The duties and responsibilities of both the primary and secondary positions have been evaluated using the FLSA tests for exemption to determine overtime liability and both the primary and secondary agencies have agreed to the method of overtime calculation. Information regarding the FLSA tests for exemption can be found at <http://www.dol.gov/elaws/esa/flsa/overtime/menu.htm>.
 2. The requesting employee has acknowledged and accepted the method of calculation for overtime payment and if employment is in more than one Career Service position, the employee has voluntarily waived the following:

- a. Claim to permanent status or any appeal rights in the secondary employment position provided by Section 110.227, F.S.
 - b. Claim to benefits in excess of one full-time position with the exception of leave credits, personal holidays and state holidays.
- C. Requests for dual employment or dual compensation shall be reviewed and approved by both the primary and secondary state agencies at the beginning of each fiscal year to ensure adequate funds are available to continue the dual employment.
- D. If either the primary or secondary employment changes, a new Dual Employment and Compensation Request form shall be submitted for approval in accordance with this guideline.
- E. Either agency may rescind their approval of the dual employment at any time.

IV. ADDITIONAL PROCEDURES FOR DETERMINING COMPLIANCE WITH THE FLSA BY SPS AGENCIES

- A. The employee and the secondary agency shall initiate the State of Florida Dual Employment and Compensation Request form in accordance with the instructions on the form (Form DMS/HRM/DUAL eff. 1/1/02).
- B. The secondary agency shall be responsible for the following:
- 1. Obtaining information from the primary agency and completing all the employment information for both the primary and secondary employment.
 - 2. Reviewing the included or excluded status of the primary employment.
 - 3. Determining the included or excluded status of the secondary employment.
 - 4. Determining the overtime liability based on the following and taking into consideration the included or excluded status of all employments:
 - a. Voluntary and Occasional and Sporadic – If the secondary employment(s) is in a different capacity from the primary employment and is voluntary and occasional and sporadic, there is no overtime liability.
 - b. OPS Primary and OPS Secondary Employment – Hours worked in both the primary and secondary employments are considered included and the combined hours in excess of 40 in a workweek are subject to overtime liability with the exception of the occupations listed in Section II, E. of this guideline.
 - c. Excluded Work and Excluded Work – When the work requirements of both the primary and secondary employment are excluded, then the combined employment is considered excluded and not subject to overtime liability.

- d. Included Work and Excluded Work – The FLSA designation and overtime liability will be determined by the nature of the combined work performed in both the primary and secondary employments.
 - (1) When the majority (more than 50%) of the combined duties are included, then both employments shall be designated included.
 - (2) When the majority (more than 50%) of the combined duties are excluded, then both employments shall be designated excluded.
 - (3) When the combined duties are 50% included and 50% excluded or the ratio is indeterminate, then both employments shall be designated included.
 - e. Included Work and Included Work – The combined hours in excess of 40 in a workweek are subject to overtime requirements.
5. Maintaining documentation supporting the FLSA determination.
- C. Both the primary and secondary agencies shall determine and agree on the method of overtime payment by using one of the following methods of calculation after the 40th hour of combined work in the workweek is reached.
- 1. Time-and-one-half of the weighted average (calculated on a weekly basis) of the different rates of pay.
 - 2. Time-and-one-half of the highest rate of pay (calculated at the end of the week).
 - 3. The payment for time-and-one half of the respective rate of pay at each agency for all hours worked shall be the joint responsibility of both agencies.
- D. The secondary agency shall sign the form prior to submitting to the primary agency for review. The secondary agency shall also provide a description of assigned duties and responsibilities and ensure that all documentation related to the request accompanies the Dual Employment and Compensation Request form.
- E. The primary agency shall review requests for dual employment and supporting documentation provided by the secondary agency and either approve or disapprove.
- F. If the dual employment is approved:
- 1. The primary agency shall distribute copies of the Dual Employment and Compensation Request form to the secondary agency.
 - 2. The secondary agency will be responsible for processing the secondary employment in the Department's human resource information system.
 - 3. The employee shall be considered to have a separate employment for each position filled.

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- 4. Each state agency will administer leave and holiday use separately in accordance with Chapter 60L-34, F.A.C.
- G. If the dual employment is disapproved, the primary agency shall distribute copies of the Dual Employment and Compensation Request form to the secondary agency.
- F. Each state agency will be responsible for maintaining copies of all Dual Employment and Dual Compensation records in accordance with the Department of State's *General Records Schedule GS1-SL for State and Local Government Agencies*.

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