



Office of Labor Relations

22 Cortlandt Street, New York, NY 10007
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Renee Campion
Commissioner
Daniel Pollak
First Deputy Commissioner

Claire Levitt
Deputy Commissioner
Health Care Strategy
Georgette Gestely
Director, Employee Benefits Program

INTERPRETIVE MEMORANDUM NO. 2023-1

TO: All Affected Agencies

FROM: Commissioner Renee Campion

DATE: April , 2023

RE: Revised Overtime Cap pursuant to 2001-2021 Citywide Agreement Article IV, Section 7 e.
{Amending Interpretive Memorandum #2019-1 dated October 22, 2019}

1. Effective May 26, 2021, the overtime cap for employees subject to the overtime provisions of the Citywide Agreement shall be increased from \$87,860 to \$90,496. Effective May 26, 2022, the overtime cap shall be increased from \$90,496 to \$93,211. Effective May 26, 2023, the overtime cap shall be increased from \$93,211 to \$96,007.
 - a. When an employee's annual gross salary rate (including longevity payments, service increments and other such applicable additions-to-gross) in effect on the date that overtime is performed, plus all overtime, differentials and premium pay paid during the calendar year to date, is higher than the applicable cap amount set forth above, such employee shall no longer be eligible to receive cash payment for such overtime, except as may be required pursuant to the Fair Labor Standards Act ("FLSA") or authorized pursuant to an overtime cap waiver issued by the Office of Labor Relations, and shall instead receive compensatory time at the rate of straight time (1X) for all authorized overtime.
 - b. Employees covered by the overtime provisions of FLSA or subject to an overtime cap waiver shall be required to follow daily time clock or sign-in-procedures.
 - c. Employees who are not covered by FLSA or subject to an overtime cap waiver and whose annual gross salary rate plus all overtime, differentials and premium paid year to date is in excess of the cap set forth above shall not be required to follow daily time clock or sign-in procedures, but shall be required to submit periodic time reports at intervals of not less than one week. The periodic time report shall be in such form as is required by the Agency.

2. Retroactive adjustments for employees who were credited with compensatory time for ordered involuntary overtime earned subsequent to **May 25, 2021**, because they exceeded the **\$87,860** overtime cap previously in effect, shall be paid for such compensatory time as follows¹:
 - a. Cash payments shall be made to an eligible employee at the appropriate overtime rate [straight time (1X) or time and one-half (1 ½ X)] set forth in Article IV of the Citywide Agreement for such previously credited compensatory time, provided that no payments shall be made that exceed the **\$90,496** overtime cap in effect as of **May 26, 2021** or the **\$93,211 overtime cap in effect as of May 26, 2022**.
 - b. Any cash payments made pursuant to this provision shall be made at the rate earned by the employee on the date the overtime was earned.
 - c. Appropriate deductions shall be made from the employee's compensatory time and sick leave banks (if any compensatory time earned subsequent to **May 25, 2021** was converted to sick leave).
 - d. If the compensatory time or sick leave (if any compensatory time earned subsequent to **May 25, 2021** was converted to sick leave) was already used by the employee, such employee shall have the following options.
 - i. Cash payment as provided above with a deduction of the equivalent time balances from the employee's annual leave bank, provided there is a sufficient balance. When the employee has insufficient annual leave balances, only subparagraph 2(d)(ii) shall apply.
 - ii. Payment of a 50 percent cash premium for all hours that would have been compensated at the rate of time and one-half (1 ½ X) with no deduction from the annual leave bank.
 - e. Any meal allowances previously paid in conjunction with such compensatory time shall be deducted from the cash payments.
 - f. Any compensatory time credited at the rate of time and one-half (1 ½ X) pursuant to Article IV, Section 3(c) of the Citywide Agreement or pursuant to FLSA shall not be subject to the provisions of this Paragraph 2.
 - g. Compensatory time credited for holidays pursuant to Articles III and VI of the Citywide Agreement are not subject to the provisions of this Paragraph 2 or Article IV of the Citywide Agreement.
3. Agencies requesting overtime cap waivers must address such requests to the First Deputy Commissioner of Labor Relations at the Office of Labor Relations (OLR) and to the First Deputy Director of the Office of Management and Budget (OMB) with an explanation of the reasons for such requests. OMB will make a recommendation to OLR, which will make the final determination. Such waivers shall **not** be deemed an authorization for the agency to exceed its existing overtime budget.
4. Unless otherwise agreed by the parties, the overtime cap amount set forth herein shall be adjusted to reflect future collective bargaining increases. Such future adjustments shall be implemented by an interpretive memorandum setting forth the new amount and the effective date thereof.

¹ Retroactive adjustments should only be made for employees whose collective bargaining units have reached agreement for the 2021-2026 round of bargaining and received the wage increases corresponding to the increases in the OT cap.