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FEB - 7 2020

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January 29, 2020

Barbara LaWall

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Hon. Mark Brnovich
Arizona Attorney General
2005 N. Central Ave.
Phoenix, AZ 85004-2926

Re: Request for opinion whether on-call pay is included in compensation for PSPRS members

Dear Mr. Brnovich:

As authorized by A.R.S. § 41-193(A)(7), I respectfully request that you issue an opinion with respect to the following question: Is nominal on-call pay provided to Pima County Sheriff's deputies for periods during which they must be available and fit for duty within an hour of being called included within their "compensation" for purposes of the statutes governing the Arizona Public Safety Personnel Retirement System (PSPRS)?

Pima County Sheriff's Department (PCSD) pays some of its employees "on-call pay." This is payment for time during which an employee is mostly free to go about their own business, but must be available and fit to report to work within one hour if they are called. It is not compensable time under the Fair Labor Standards Act. The employee is only paid a nominal hourly rate of \$1.30 for this time. On-call pay is fully defined in Pima County Personnel Policy 8-102(E), a copy of which is enclosed.

PCSD deputies are members of the PSPRS. *See* A.R.S. § 38-842(24)(f). Under the statutes governing this system, "compensation" is defined as base salary, overtime pay, shift differential pay, compensatory time in lieu of overtime, and holiday pay, paid on a regular monthly, semimonthly or biweekly payroll basis. § 38-842(12). "Base salary" is defined as the compensation regularly paid for services rendered to an employer before the addition of any extra moneys. *Id.* The statute also defines things that do not constitute compensation, including payment for unused sick leave or vacation leave, payment for unused compensatory time, or "fringe benefits." *Id.*

Because on-call pay is not included in the category of things that are considered compensation, but is also not included in the category of things that are not considered compensation, the statute does not expressly answer whether it should be included in the calculation of an employee's compensation. The available agency guidance does not address on-call pay. See <http://www.psprs.com/employers--local-boards/contribution-rates-reporting>.

Accordingly, I respectfully request that you issue an opinion on this question.

Sincerely,

A handwritten signature in cursive script that reads "Barbara LaWall".

Barbara LaWall
Pima County Attorney

A. Definitions

1. "Premium pay" means compensation in addition to an employee's normal pay and includes the following: overtime pay, compensatory time, callback pay, on-call pay, holiday pay, shift differential pay, special assignment pay, and multilingual compensation.
2. "Overtime" means time worked in excess of forty (40) hours per work week, unless a different definition is required by law.
3. "Compensatory time" means earned time recorded on an employee's pay record in lieu of overtime pay.
4. "Holiday benefit" means up to eight (8) hours paid compensation for time off in recognition of each County holiday. An employee on a leave of absence without pay and who is using Catastrophic Leave time is not eligible for the holiday benefit.
5. "Multilingual compensation" means additional pay given to an eligible employee for providing sign language or non-English language services.

B. Exclusions from Premium Pay

The following are not eligible for premium pay except that an Appointing Authority shall receive the holiday benefit as provided herein.

1. Elected Officials;
2. Appointing Authorities; and
3. Anyone who is not an employee on County payroll.

C. Overtime

1. An employee eligible for overtime shall be compensated for overtime hours worked by either one of the following methods, at the discretion of the Appointing Authority:
 - a. By payment at one and one-half (1½) times the employee's current hourly rate;
 - b. By compensatory time at a rate of one and one half (1½) hours off for each hour of overtime worked and not paid.

- C. 2. The following are not eligible for overtime:
- a. Elected Officials;
 - b. Members of the personal staff of Elected Officials;
 - c. Persons appointed by Elected Officials to serve on a policy-making Board or Commission;
 - d. Advisors to Elected Officials with respect to the constitutional or legal powers of their office;
 - e. Employees classified as Executive (E), Administrative (A), or Professional (P), under the Fair Labor Standards Act, except those (E, A, or P) employees designated as eligible for overtime under the County's classification system.
3. Employees shall work overtime only when authorized by the Appointing Authority or designee. Overtime shall be allocated as evenly as possible among all employees qualified to do the work. While preference may be given to those employees who wish to volunteer for the work, all employees are required to work overtime when requested to do so.
4. Compensatory time shall not accumulate in excess of one hundred twenty (120) hours. An employee eligible for overtime who has one hundred twenty (120) hours of accrued compensatory time is to be paid for future authorized overtime worked. If compensatory time is accrued, it cannot be converted back to pay except as provided in the termination policy or other directive from the Board of Supervisors. The Appointing Authority shall establish procedures for timely usage of compensatory time accrued.
5. An employee who changes from one employment type to another shall retain any accumulated compensatory time, except as noted below, and shall be eligible to use and/or accrue compensatory time in accordance with his/her current employment type. An employee who changes status from a non-exempt employee to an exempt employee or who transfers from one County department to another shall be paid for any accumulated compensatory time at the current hourly rate in effect at the time of the transfer or vacating of the non-exempt position. An employee who is in a detail assignment to an exempt classification at the time shall be paid for accumulated compensatory time at the hourly rate held prior to the detail assignment.

D. Callback Pay

An employee eligible for overtime compensation shall be eligible to receive callback pay. An eligible employee who has left a place of work and is called back to work before his/her next regularly scheduled work shift shall receive a minimum of two (2) hours of pay if reporting back to the worksite or a minimum of fifteen (15) minutes of pay for problem resolution by telephone. Callback pay applies in emergency circumstances only. The callback period shall begin when the employee is notified to return to work. Intermittent employees, as defined in Merit System Rule 1, are not eligible to receive callback pay.

1. The employee must report as soon as possible to the worksite. The callback period ends when the employee completes the job assignment. If the employee's private car is used for transportation in a callback situation, mileage shall be paid at the approved rate. Callbacks shall be allocated as evenly as possible among all employees qualified to do the work. All employees are required to work if called back.
2. If the employee is able to resolve the problem by telephone and is not required to report to the worksite, he/she shall receive pay for the actual time spent in problem resolution, with fifteen (15) minutes as minimum pay for each telephone call received.

E. On-Call Pay

An employee eligible for overtime compensation shall be eligible to receive on-call pay. The eligible employee shall be designated by the Appointing Authority to be on call and available for immediate contact for a specific period of time and particular purpose. Being available for immediate contact does not constitute on call unless the employee has been designated on call as above. On-call pay shall be paid at the rate of one dollar and thirty cents (\$1.30) per hour of on-call duty. On-call pay may not be coincident with any other pay except for paid holidays.

Location of the employee for on-call duty shall be at the employee's discretion, with the stipulation that immediate contact can be made and that the employee must be able to report fit for duty within one (1) hour, unless other conditions require a shorter period. On-call duty shall be allocated as evenly as possible among all employees qualified to do the work. All employees are required to be on call when requested. Intermittent employees, as defined in Merit System Rule 1, are not eligible to receive on-call pay.

F. Holidays

1. Pima County recognizes the following actual holidays:

(1)	January 1	New Year's Day
(2)	Third Monday in January	Martin Luther King, Jr. Day
(3)	Third Monday in February	Presidents' Day
(4)	Last Monday in May	Memorial Day
(5)	July 4	Independence Day
(6)	First Monday in September	Labor Day
(7)	November 11	Veterans' Day
(8)	Fourth Thursday in November	Thanksgiving Day
(9)	Friday after the Fourth Thursday in November	
(10)	December 25	Christmas Day

County offices shall be closed on each of the ten (10) actual holidays listed above. If actual holidays 1, 5, 7, or 10 fall on a Sunday, the holiday shall be designated as observed for pay purposes on the following Monday. If actual holidays 1, 5, 7, or 10 fall on a Saturday, the holiday shall be designated as observed for pay purposes on the preceding Friday.

2. If possible, employees eligible for the holiday benefit, including temporary employees, shall be given time off with pay for each recognized holiday, either on the day the holiday is observed or within the work week in which the holiday falls. Full-time employees shall receive no more than eight (8) hours of time off. Variable-time, part-time employees and employees on reduced schedule leave under ADA shall receive a prorated amount of time off based on their work schedule. For non-exempt employees, holiday benefit hours are paid based on their work schedule. Exempt employees will receive their regular salary for a pay period in which the holiday falls. Intermittent employees, as defined in Merit System Rule 1, are not eligible for the holiday benefit, but may receive holiday pay.
3. If a non-exempt employee eligible for the holiday benefit is required to work on a holiday, and the department is unable to give the employee holiday benefit time off within the work week, the employee shall receive the pay he/she would have received for the holiday benefit plus the following holiday pay:

Actual or Observed Holiday - 1½ times regular pay rate for time worked, minimum two (2) hours.

- F. 3. If a non-exempt employee eligible for the holiday benefit is required to work on a holiday, and the employee receives the holiday benefit time off within the work week, he/she shall receive holiday pay for holiday hours worked. At the discretion of the Appointing Authority, the employee may be granted annual leave or compensatory time off and still remain eligible to receive holiday pay for holiday hours worked.

If an exempt employee eligible for the holiday benefit is required to work on a holiday, and the department is unable to give the employee holiday benefit time off, the employee shall receive the pay he/she would have received for the holiday benefit and he/she shall be credited, in the form of straight-time compensatory time, with the number of hours worked on the holiday, not to exceed eight (8) hours.

4. Holiday Benefit & Workers' Compensation
- a. An employee eligible for the holiday benefit, who elects to use annual leave, sick leave, or compensatory time to supplement workers' compensation benefits, shall receive as holiday benefit the equivalent to the daily amount of compensatory time or leave banks utilized to supplement worker's compensation benefits.
- b. An employee eligible for the holiday benefit, who works modified duty and is also compensated by workers' compensation benefits, shall receive the holiday benefit based on his/her work schedule.
5. An employee eligible for the holiday benefit, who is on an approved medical leave of absence without pay, and who chooses to use his/her accrued sick or annual leave, or compensatory time, in conjunction with leave without pay, shall receive the holiday benefit based on his/her work schedule. Catastrophic leave hours and/or unpaid hours will not be calculated nor applied for these purposes.
6. An employee eligible for the holiday benefit, who is on an approved leave of absence under the Family and Medical Leave Act, and who is using his/her accrued sick or annual leave, or compensatory time, in conjunction with leave without pay, shall receive the holiday benefit based on his/her work schedule. Catastrophic leave hours and/or unpaid hours will not be calculated nor applied for these purposes.

G. Shift Differential Pay

Qualifying departments are listed on Attachment I to this policy.

1. Definitions
 - a. "Evening shift" means a work shift in which more than half of the hours worked fall between 5 p.m. and midnight.
 - b. "Night shift" means a work shift in which more than half of the hours worked fall between midnight and 8 a.m.
2. A non-exempt employee, as established by Merit System Rule 1, who works an evening or night shift as defined in G.1, shall receive shift differential pay of sixty cents (\$0.60) per hour for evening shift and sixty-five cents (\$0.65) per hour for night shift, in addition to the current hourly rate for each hour worked on the shift. Eligible employees shall receive shift differential pay for all hours worked on the shift as defined in G.1 above.
3. Only eligible employees who are actually working or using their own sick leave accruals (i.e., not using annual leave, compensatory time, catastrophic leave bank hours, any type of paid leave, or receiving holiday benefit) are eligible for shift differential pay.

H. Special Assignment Pay

Additional compensation may be authorized by the Board of Supervisors for certain employees who perform hazardous duty (duty which imperils or endangers an employee), or other duty under special circumstances. The Appointing Authority shall annually submit a request to the County Administrator with justification for the special assignment pay no later than July 1.

I. Multilingual Compensation

1. An employee may receive additional pay for providing sign language or non-English language services if the employee's duties require multilingual capability.

Qualification and eligibility requirements for multilingual compensation are set out by administrative procedures.
2. Multilingual pay is subject to rescission at any time. Rescission of multilingual pay does not constitute a disciplinary reduction in pay and is not grievable or appealable.

- I.
 3. Only eligible employees who are actually working or using their own sick leave accruals (i.e., not using annual leave, compensatory time, catastrophic leave bank hours, any type of paid leave, or receiving holiday benefit) are eligible for multilingual pay.

J. Attachment(s)

Changes may be made to attachment(s) to this policy by Human Resources, with County Administrator approval.

ATTACHMENT I, Pima County Personnel Policy 8-102

Departments with Evening & Night Shifts

County Attorney's Office (Criminal Division Legal Processing Support Unit)
Facilities Management
Health (Animal Care)
Information Technology
Justice Court Ajo
Justice Court Green Valley
Justice Court Tucson
Library
Medical Examiner
Regional Wastewater Reclamation
Sheriff
Transportation