

PT-820

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Standby Duty Pay

Entitlements under title 5, United States Code, and the Fair Labor Standards Act (FLSA)

References

- 5 USC 5545(c)
- 5 CFR 550.112(k)
- 5 CFR 550.141 - 144
- 5 CFR 551.431

Standby Duty Pay. The rules on standby duty are found in 5 CFR 550.112(k) for employees who are exempt from the Fair Labor Standards Act (FLSA) and in 5 CFR 551.431 for FLSA-covered employees. Standby duty is defined as a scheduled duty status that confines an employee to an employer-designated duty location for longer than ordinary periods of time and requires the employee to remain in a state of readiness to perform work during such time. Employees meeting these criteria are entitled to overtime pay for standby duty.

The main issue in determining whether an employee is entitled to overtime pay for standby duty is the nature of restrictions placed on the employee. Time spent on standby duty is hours of work if, for work-related reasons, the employee is restricted by official order to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee's activities so substantial that the employee cannot use the time effectively for his or her own purposes. A finding that an employee's activities are substantially limited may not be based on the fact that an employee is subject to restrictions necessary to ensure that the employee will be able to perform his or her duties and responsibilities, such as restrictions on alcohol consumption or use of certain medications.

An employee is not considered restricted for "work-related reasons" if, for example, the employee remains at the post of duty voluntarily, or if the restriction is a natural result of geographic isolation or the fact that the employee resides on the agency's premises.

Payments. Computation of overtime pay can be found in 5 CFR 550.113 for FLSA-exempt employees and in 5 CFR 551.501 for FLSA-nonexempt employees.

Annual Premium Pay for Standby Duty. Under 5 CFR 550.141 an agency may pay premium pay on an annual basis to an employee in a position requiring him or her

regularly to remain at, or within the confines of, his or her station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Such pay is provided instead of premiums for regularly scheduled overtime, night, holiday, and Sunday work. An employee is in a standby status, as referred to in section 550.141, only at times when he or she is not required to perform actual work and is free to eat, sleep, read, listen to the radio, or engage in other similar pursuits. An employee is performing actual work, rather than being in a standby status, when full attention is devoted to work, even though the nature of the work does not require constant activity.

Firefighters covered by 5 CFR Part 550, Subpart M, are not eligible for annual premium pay for standby duty.

○ *Restrictions for Annual Premium Pay Under Section 550.141*

Annual premium pay for standby duty may only be authorized when the premium pay, over a period appropriate to reflect the full cycle of the employee's duties and the full range of conditions in his position, would be:

- (1) More than the premium pay which would otherwise be payable under 5 CFR Part 550, Subpart A for the hours of actual work customarily required in his position, excluding standby time during which he performs no work; and
- (2) Less than the premium pay which would otherwise be payable for the hours of duty required in his position, including standby time during which he performs no work.

○ *Basis for Which Premium Pay under Section 550.141 Is Authorized*

The requirement for the type of position referred to in section 550.141 that an employee regularly remain at, or within the confines of, his station must meet the following criteria:

- (1) The requirement must be definite and the employee must be officially ordered to remain at his station. The employee's remaining at his or her station must not be merely voluntary, desirable, or a result of geographic isolation, or solely because the employee lives on the grounds; and
- (2) The hours during which the requirement is operative must be included in the employee's tour of duty. This tour of duty must be established on a regularly recurring basis over a substantial period of time, generally at least a few months. The requirement must not be occasional, irregular, or for a brief period; and
- (3) The requirement must be associated with the regularly assigned duties of the employee's job, either as a continuation of his or her regular work which includes standby time, or as a requirement to stand by at the post to perform regularly assigned duties if the necessity arises.

The interpretation of the words “at”, “within the confines of his station”, “longer than ordinary periods of duty”, and “a substantial part of which consists of remaining in a standby status rather than performing work”, in section 550.141 are discussed under section 550.143.

○ *Rates for Annual Premium Pay*

Rates for annual premium pay are determined under 5 CFR 550.144. Premium pay is set at an appropriate percentage, not in excess of 25 percent, of that part of the employee’s rate of basic pay which does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under 5 USC 5304 or special rate of pay under 5 USC 5305 or similar provision of law). Annual premium pay for standby duty will be paid at one of the following percentages:

(1) Tour of duty with 24 hours on and 24 hours off with a schedule of :

Hours per week	Hours of actual work	Percentage
60 a week	less than 25 hours	5%
60 a week	25 hours or more	10%
72 a week	less than 24	15%
72 a week	24 hours or more	20%
84 a week		25%

(2) Tour of duty = all day light hours, 12 hours a day, or 24 hours a day, with employee living at worksite during tour:

Days a week	Hours of actual work a week	Percentage
5 days a week	less than 25 hours	5%
5 days a week	25 hours or more	10%
6 days a week	less than 30 hours	15%
6 days a week	30 hours or more	20%
7 days a week		25%

(3) Employee has basic workweek requiring full-time performance of duty plus requirement to remain on standby duty:

- 14 to 18 hours a week on workdays or extending into a nonworkday--15%
- 19 to 27 hours a week on workdays or extending into a nonworkday--20%
- 28 or more hours a week on workdays or extending into a nonworkday--25%
- 7 to 9 hours on one or more regular nonworkdays--15%
- 10 to 13 hours on one or more regular nonworkdays--20%
- 14 or more hours on one or more regular nonworkdays--25%

(4) Percentage premium pay is increased when employee is required to work on Sunday an average of:

20 to 40 Sundays a year increases rate by 2 1/2%

41 or more Sundays a year increases rate by 5%

If an employee is eligible for premium pay on an annual basis, but none of the percentages listed above is applicable, or unusual conditions are present which seem to make the applicable rate unsuitable, the agency may propose a rate of premium pay on an annual basis for OPM approval.