

**WEST VIRGINIA LEGISLATURE**  
*Legislative Post Audit Division*

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**Denny Rhodes**  
Director

January 12, 2016

The Honorable William Cole, President  
West Virginia State Senate  
Post Audits Subcommittee, Co-Chair  
Room 229 M, Building 1  
State Capitol Complex  
Charleston, WV 25306

The Honorable Timothy Armstead, Speaker  
West Virginia House of Delegates  
Post Audits Subcommittee, Co-Chair  
Room 228 M, Building 1  
State Capitol Complex  
Charleston, WV 25306

Dear Mr. President and Mr. Speaker:

The Post Audit Division of the Legislative Auditor's Office is currently conducting an audit of the Division of Highways (DOH). During the audit, the question of the legality of overtime compensation paid to DOH employees who are classified as exempt according to the Fair Labor Standards Act (FLSA) was raised. After consultation, attorneys with Legislative Services have determined that it is not legal for Civil Service employees - who are classified as exempt according to FLSA - to receive overtime pay in addition to their regular salary. A FLSA non-exempt employee is an employee who is entitled to overtime pay. A FLSA exempt employee is an employee who is paid at least \$23,600 per year, is paid on a salary basis, and also performs exempt job duties such as executive, professional and administrative. FLSA exempt employees are not entitled to overtime pay.

Currently, DOH policies state that its employees receive additional compensation at a straight time rate for hours worked in excess of 40 hours per week, even if they are classified as exempt. According to our legal opinion, included with this letter, employees which meet the FLSA definition of exempt are not subject to the overtime pay requirements of federal and state wage and hour laws. Further, the Department of Personnel's (DOP) Administrative Rule provides that, in addition to their regular salary, a classified employee may be paid "authorized overtime" and compensation for that work to be paid in accordance with the FLSA, federal regulations, and W.Va. Code 21-5C-1 et seq. In addition to the FLSA, the state Minimum Wage and Maximum

Hours Act (MWMHA) describes employees are to be paid “at a rate not less than one and a half times the regular rate at which he is employed.” W.Va. Code §21-5C-3(a).

Based upon the FLSA and Minimum Wage and Maximum Hours Act, “overtime” is defined as compensation to non-exempt employees of one and a half times their regular rate of pay for hours worked in excess of forty. **Because “overtime” is not required for exempt employees, additional pay to exempt employees cannot meet the definition of “overtime” as established by DOP’s rule.** Thus, any payments to exempt employees categorized as “overtime” are not authorized by the DOP’s Administrative Rule, whether or not they are approved by the agency. The only other mechanism by which the DOH can pay its exempt employees additional compensation is through pay differential, monetary incentive, or statutorily required/authorized payments. At this juncture, there is no information from the DOH to determine if its hourly, straight time payments to exempt employees are supported by any of these avenues.

DOH is not the only state agency which pays FLSA exempt employees overtime/additional straight time. A study completed in 2012 by the Post Audit Division reported that 23% of State agencies surveyed provided overtime cash payments to FLSA exempt employees.

### **Overtime Pay Should Move Employees into a Higher PEIA Premium Tier**

An effect by the payment of overtime to state employees is in regards to how PEIA calculates employee payment tier classifications. There are 10 salary based premium tiers. **Currently, overtime has no effect on the tier that employees are classified.** Following are two hypothetical examples which question the fairness of the current method to classify PEIA premiums.

1. Employee A and Employee B both make \$50,000 per year in base salary. Employee B receives an additional \$15,000 in overtime pay, thus total compensation of \$65,000 per year. Yet, both pay between \$50 and \$376 per month in premiums based on insurance options.
2. Employee A has a base salary of \$52,000. Employee B has a salary of \$42,000, but is also paid an additional \$15,000 for a total salary of \$57,000. Yet, Employee A pays more in premiums, deductibles, and out-of-pocket maximums, than an employee whose salary is higher in total compensation.

In February 2013, the Post Audit Division released a study on “Overtime Compensation of \$5,000 or Greater” and recommended PEIA look into including overtime compensation in the determination of PEIA payment tier classifications. It was the Legislative Auditor’s opinion at the time that if PEIA was unable to consider such a change, it would be beneficial for PEIA and the State to consider this option as part of the design for the wvOASIS system. According to the Project Director:

*The wvOASIS system is capable of providing biweekly total compensation (including overtime) to PEIA.*

When asked whether PEIA considered changing the payment tier classifications to include additional compensation, the Deputy Secretary of the Department of Administration responded:

*Yes, the agency (PEIA) considered including additional compensation but was unable to develop a methodology that allowed for efficient billing and payroll withholding.*

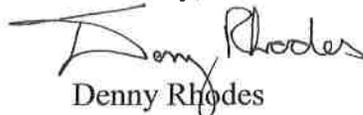
She further indicated that State employees and non-State employees are not separated and complicates any changes. It is the opinion of the Legislative Auditor that if PEIA could charge premiums based upon total biweekly/monthly compensation, the payments would more accurately and fairly be based upon the insured's ability to pay.

Regarding these issues, the Legislative Auditor recommends the following:

- 1. The Legislative Auditor recommends all additional compensation for hours worked beyond the normal work week to FLSA exempt employees cease immediately.*
- 2. The Legislative Auditor recommends that representatives from PEIA develop a methodology for including overtime compensation as part of state employees' salaries for determining the PEIA payment tier. Additionally, PEIA representatives and the Project Director of wvOASIS should work together to ensure that the interface between the PEIA computer system and wvOASIS enables PEIA to receive total biweekly/monthly compensation for all employees. PEIA representatives should provide its methodology or methodology options to the Legislative Auditor by February 12, 2016 so he may disseminate that information to the Legislature.*

The Post Audit Division will continue to develop these issues for the Legislature including an attempt to quantify the amount of overtime paid at the Division of Highways and the effects on state government. However, one of the challenges for previous fiscal years is that the Division of Highways sometimes used other codes to record overtime pay, which results in overtime being classified as additional types of compensation. According to the wvOASIS Project Director, wvOASIS has largely addressed this issue through the use of Kronos and the inherent configurations.

Sincerely,



Denny Rhodes

**Legislative Services  
Division**

# Memo

**To:** Post-Audit Division  
**From:** Anne Ellison, Counsel  
**Date:** January 5, 2016  
**Re:** Payment of Overtime to Exempt Employees

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I am writing to address an issue raised during the audit of the Division of Highways.

## ISSUE

Does the Division of Highway's payment of overtime to classified service employees that are exempt under the Fair Labor Standards Act, violate federal or state law?

## SHORT ANSWER

Yes. The DOH's exempt employees are not subject to the overtime pay requirements of federal and state wage and hour law. Further, the Department of Personnel's Administrative Rule provides that, in addition to their regular salary, a classified employee may be paid "authorized overtime", and that compensation for that work be paid in accordance with the FLSA, federal regulations, and W.Va. Code §21-5C-1 et seq. Because "overtime" is not required for exempt employees, additional pay categorized as "overtime" is impermissible under state law.

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## FACTS

The Division of Highways is a division of the West Virginia Department of Transportation. As an agency within the executive branch, it is subject to the West Virginia Division of Personnel's statutes and rules regarding the recruitment, retention, and compensation of its employees. During an audit of the agency's pay practices, the Post Audit Division will make a determination as to whether the duties of the particular position meet the various tests required to render that position exempt or non-exempt under the FLSA.

## 1. Fair Labor Standards Act

In undertaking an analysis of whether the DOH's exempt employees<sup>1</sup> are entitled to overtime pay, or additional pay, it is appropriate to first look to the federal law regarding overtime. The Fair Labor Standards Act (hereinafter "FLSA") establishes, among other things, minimum wage and overtime pay standards for workers within the United States. 29 U.S.C. §§ 201, et seq. (2002). Under its provisions, the FLSA mandates that employers must pay at least the federal minimum wage for all hours worked and, if the employer permits or requires employees to work more than forty hours per workweek, pay employees at least one and one-half times the regular hourly rate of pay for all overtime hours performed. 29 U.S.C. §§ 206 and 207(a)(1). In that vein, the FLSA enunciates minimum requirements for determining a regular hourly rate of pay, as used in the calculation of overtime. See *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 424, 65 S. Ct. 1242 (1945); see also *Butler v. DirectSat USA, LLC*, 800 F. Supp. 2d 662, 671 (D. Md. 2011) (discussing FLSA's establishment of "minimum requirements"). The FLSA's purpose is to articulate "a national floor under which wage protections cannot drop." *Boggess v. City of Charleston*, 234 W. Va. 366, 765 S.E.2d 255 (W. Va. 2014) (citing *Pacific Merch. Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1425 (9th Cir. 1990)).

The protections afforded by the FLSA cover many workers throughout the United States. There are, however, a number of exemptions to these statutory protections. Section 13(a)(1) of the Fair Labor Standards Act provides an exemption from the Act's minimum wage and overtime requirements for any employee employed in a **bona fide executive, administrative, or professional capacity**. 29 CFR 541.0(a)

Because entitlement to overtime is dependent upon the employee's status as non-exempt or exempt, this determination is of great importance. Currently, whether a classified employee is considered exempt or non-exempt is determined by the DOH.<sup>2</sup>

## 2. WV Minimum Wage and Maximum Hours Act

In addition to the requirements of the FLSA, West Virginia's Minimum Wage and Maximum Hours Act ("MWMHA") should also be considered. See W.Va. Code §21-5C-1. The MWMHA provides:

(e) "Employer" includes the State of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct and permanent location or business establishment: *Provided*, That prior to January 1, 2015, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him or her are subject to any federal act relating to

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<sup>1</sup> Throughout this memo, references to "exempt employee" specifically refer to the Fair Labor Standards Act or the Minimum Wage Maximum Hours Act.

<sup>2</sup> The West Virginia Division of Personnel formerly made determinations as to whether classified employees were exempt, using the employee's job duties as provided in the job description. The DOP, however, now leaves the determination to the agency employer and provides guidance via an Interpretive Bulletin. See <http://www.personnel.wv.gov/SiteCollectionDocuments/Policies/FLSA.pdf>

minimum wage, maximum hours and overtime compensation: *Provided, however,* That after December 31, 2014, for the purposes of section three of this article, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him or her are subject to any federal act relating to maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: ... (6) any individual employed in a bona fide professional, executive or administrative capacity;

The MWMHA applies to any state agency that employs 6 or more employees in one location, so long as not more than eighty percent of its workforce is subject to the FLSA. Like FLSA, the MWMHA requires that employees be paid overtime pay at a rate of one and a half times their regular hourly rate for hours worked in excess of forty in a workweek. W.Va. Code §21-5C-3. Also, the MWMHA's definition of "employee" specifically exempts any person employed in a professional, executive or administrative capacity. See W.Va. Code §21-5C-1. For purposes of this memo, we assume that both the FLSA and the MWMHA apply to the DOH.

The West Virginia Supreme Court of Appeals has addressed the interplay of the FLSA and the MWMHA. In syllabus point 1 of Local 313, *International Association of Firefighters v. City of Morgantown*, 174 W.Va. 122, 323 S.E.2d 604 (1984), the Court held that

[O]ur wage and hour law found in W.Va. Code, 21-5C-1, et seq., is modeled to some extent on the federal minimum wage law contained in the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. . . . Certainly, the language concerning overtime in W.Va. Code, 21-5C-3(a), . . . is markedly similar to the corresponding language in the federal act." *Id.* at 606-07 (citations omitted). Therefore, the Court turns to federal case law for assistance in determining the applicable standards. *McCarty v. Harless*, 181 W. Va. 719, 384 S.E.2d 164 (1989).

In sum, whether the FLSA or MWMHA apply, non-exempt employees are generally entitled to overtime compensation at a rate of one and a half times their regular rate of pay. Conversely, exempt employees are not statutorily entitled to "overtime" pay.

### **3. Department of Personnel Statutes and Rules**

In addition to federal and state wage and hour laws, the State of West Virginia has specific statutes and rules that address compensation of its employees. West Virginia has an established civil service system which lays out the process for "personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of its civil employees, and other incidents of state employment." W.Va. Code § 29-6-1.

West Virginia's civil service system employs various definitions, including:

(e) "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same qualifications, the same title and the same schedule of

compensation and benefits may be equitably applied to each position in the group;

(g) "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the higher education governing boards;

(h) "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system;

(i) "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan;

(m) "Position" means a particular job which has been classified based on specifications;

(o) "Specification" means a description of a class of position which defines the class, provides examples of work performed and the minimum qualifications required for employment;

W.Va. Code § 29-6-2.

The Division of Personnel ("DOP") is responsible for promulgating, adopting and revising rules related to the compensation of employees in the classified service ("hereinafter referred to as classified employees"). The rules place responsibility on the DOP:

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for **and the same schedule of pay may be equitably applied to all positions in the same class.**

(2) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state fiscal officers, and after a public hearing held by the board. Such pay plan shall become effective only after it has been approved by the governor after submission to him by the board. Amendments to the pay plan may be made in the same manner. **Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed.** The principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.

143 C.S.R. § 1-5 (emphasis added). The purpose of the pay plan's structure is to provide "adequate compensation based on the principles of equal pay for equal work among the various agencies and on comparability to pay rates established in other public and private agencies and businesses." 143 C.S.R. § 1-5.

The pay plan includes multiple pay grades (2-26) that each have minimum, market and maximum rates of pay. 143 C.S.R. § 1-5.2. The rate for each newly appointed employee begins at the minimum salary for the classification and pay grade, and may be increased up to the market rate based upon the employees' pertinent experience or training. 143 C.S.R. § 1-5.4.b. The appointing authority must determine initial pay rate for a newly appointed employee, which would

require approval by the DOP. An employee may be hired at a salary above the market rate where the "appointing authority can substantiate severe or unusual recruiting difficulties for the class." *Id.* This compensation plan applies to all employees in the classified service and provides standard pay rates for full-time employees for regularly established working hours in all offices and departments.

In addition to the salary paid to a classified employee, the DOP Administrative Rule also addresses the permissible types of "additional pay" that may be made.

**Additional Pay** – Except for **authorized overtime, Board approved pay differentials and monetary incentives, or other statutorily required and/or authorized payments**, appointing authorities shall make no pay in addition to the **regular salary** to any employee.

143 C.S.R. § 1-5.4.d. (emphasis added). Based upon this rule, additional pay to the DOH's exempt employees must fall into one of these categories to be permitted by law.

Because the nature of the payments to the DOH's exempt employees are based upon hours worked in addition to forty, we must determine whether they constitute "overtime." "Overtime work" and compensation is specifically addressed in the rule.

Overtime Work and Holiday Work. -- An appointing authority or his or her designated representative may require an employee to work in excess of the prescribed working hours or on holidays when the work is considered by the employer to be necessary to the public interest. **Compensation shall be made in accordance with the federal Fair Labor Standards Act and relevant federal regulations and W. Va. Code §21-5C-1 et seq.** Sick and/or annual leave requested in the same workweek in which additional hours are worked shall be reduced and credited back to the employee's accrued balances to reduce or avoid payment for hours in excess of the agency work schedule.

143 C.S.R. § 1-14.7 (emphasis added).

As described briefly in Section 1, "overtime compensation" is defined by the FLSA as "compensation required by subsection (a)." 29 U.S.C. § 207(o)(7). 29 USC § 207(a) provides:

Except as otherwise provided in this section, ***no employer shall employ any of his employees*** who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, ***for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.***

In addition to the FLSA, the MWMHA describes employees are to be paid "at a rate not less than one and a half times the regular rate at which he is employed." W.Va. Code §21-5C-3(a).

Based upon the FLSA and MWMHA, "overtime" is defined as compensation to non-exempt employees of one and a half times their regular rate of pay for hours worked in excess of forty. **Because "overtime" is not required for exempt employees, additional pay to exempt employees cannot meet the definition of "overtime" as established by the DOP's rule.** Thus, any payments to exempt employees categorized as "overtime" are not authorized by the DOP's Administrative Rule, whether or not they are approved by the agency.

The only other mechanism by which the DOH can pay its exempt employees additional compensation is through pay differential, monetary incentive, or statutorily required/authorized payments. At this juncture, there is no information from the DOH to determine its hourly, straight time payments to exempt employees are supported by any of these avenues.



STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION

EARL RAY TOMBLIN  
GOVERNOR

JASON PIZATELLA  
ACTING CABINET SECRETARY

December 23, 2015

Aaron Allred  
Legislative Auditor  
State Capitol Complex  
Building 1, Room E-132  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610

Dear Mr. Allred:

Thank you for your letter dated December 15, 2015 concerning the overtime compensation policies of the Division of Personnel and policies governing "work from home." The response below represents the best information that I have available to me as of the date above.

1. **Any policies, procedures, rules, or other written guidance, other than FLSA, which the Division of Personnel (DOP) uses to determine if/when FLSA exempt employees are paid overtime.**

DOP does not regulate, monitor, or have policies specific to the payment of overtime compensation to FLSA-exempt employees. DOP has no oversight of or access to payroll-related expenditure data for classified or classified-exempt employees.

2. **Are there any policies, procedures, rules or other written guidance, other than FLSA, which the DOP exempt agencies use to determine if/when a FLSA exempt employee is paid overtime.**

There are none.

3. **If there are no policies, procedures, rules, or other written guidance, other than FLSA, to support the decision to either pay or not pay an exempt employee overtime why has such a policy not been established? Also, what is DOP's role in determining when exempt employees are eligible to be paid overtime?**

This response is based upon DOP's understanding that the term "exempt" used in the question is in relation to FLSA status as opposed to DOP merit system coverage. The

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question of payment for additional hours worked by FLSA-exempt employees is clearly a question of fiduciary responsibility. Agencies have a responsibility to spend taxpayer dollars in a reasonable and fiscally responsible way and in compliance with their duty to safeguard the public interest. Historically, agencies have argued that the payment of overtime to FLSA-exempt employees is in the public interest as they cannot recruit or retain FLSA-exempt employees using the base compensation to which they are otherwise limited. DOP has no specific role in determining when FLSA-exempt employees are eligible to receive overtime.

The following is a chronology of DOP's history pertaining to the development of FLSA policy:

- The agency drafted an Hours Worked/Overtime policy in May 1994 based upon the West Virginia Division of Labor's overtime regulations but the policy was never implemented.
  - DOP drafted, with assistance from the Legislative Auditor, the Fair Labor Standards Act for Public Employees policy (DOP-P20) in October 1999. The State Personnel Board approved this policy and it became effective January 1, 2000. The policy did not, however, prohibit the provision of compensatory time or overtime compensation for FLSA-exempt employees.
  - The State Personnel Board subsequently rescinded and replaced Policy DOP-P20 on October 1, 2004, with the current Fair Labor Standards Act Interpretive Bulletin (DOP-B5). The revisions to this document incorporated the August 23, 2004 revisions to the federal FLSA regulations.
4. If the July 6, 2015 proposed rule by President Obama which could potentially raise the salary threshold for determining overtime exempt from \$23,660 to approximately \$51,000 becomes effective, how many state employee's [sic] would be reclassified from exempt to non-exempt for FLSA purposes?

DOP does not have the data to answer this question.

5. Based on conversations with various agency personnel, apparently some agencies include additional hours worked in regular pay, so the total amounts paid to employees for hours worked in excess of their regular work schedule, may be greater than the amount of compensation categorized as overtime and paid to employees. If possible, provide my office with the total amount of overtime paid to exempt state employees during FY 2015. If not possible, please explain why you are unable to provide these figures.

Aaron Allred  
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DOP does not have the data to answer this question. DOP further does not regulate, monitor, or have access to payroll-related expenditure data for classified or classified-exempt employees.

6. Which of these recommendations has the DOP implemented?

DOP has worked with wvOASIS and the Human Resource Advisory Committee (HRAC) on standardizing overtime practices among the classified agencies and has created an FLSA taskforce subcommittee from among the HRAC members. The intent of this taskforce was to develop recommendations for the standardization of business processes related to overtime pay. As part of the review process, the DOP position description form, which must be submitted to DOP each time significant changes are made to the duties or responsibilities of a position, will include direction to the agency to review the FLSA exemption status of the position based on the change in duties and/or responsibilities. While the FLSA includes a wide variety of partial and complete exemptions from its minimum wage and overtime requirements, most employer classification procedures are confined to evaluating employee status under the FLSA's white-collar exemptions for executive, professional, and administrative employees. Ultimately, the appointing authority is responsible for determining the FLSA exemption status of the employee based on the actual duties performed rather than the generic DOP classification specifications. DOP does provide training, however, on the FLSA to state agencies and has a library of guidance material on its web site.

DOP lacks the statutory authority to prevent the payment of overtime or compensatory time to employees of agencies not covered by the DOP merit system and further lacks authority to prevent such payments in classified agencies. Ideally, such a directive would need to come from the State Legislature or, absent any relevant legislation, the Governor's Office and would be limited to the employees over which that office exercises control. Further, the practice is not in violation of DOP law, rules, or policies. Subsection 5.4.d of the DOP Administrative Rule, W. VA. CSR § 143-1-1 *et seq.*, specifically enables the payment of authorized overtime and does not exclude FLSA-exempt employees specifically:

Additional Pay. - Except for authorized overtime, Board approved pay differentials and monetary incentives, or other statutorily required and/or authorized payments, appointing authorities shall make no pay in addition to the regular salary to any employee. Additional duties imposed or volunteered are not an exception to this rule.

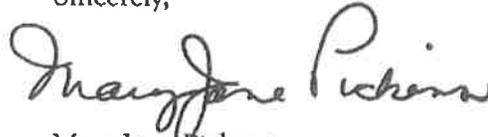
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7. Considering the importance of establishing a work-at-home policy, why has the DOP not established policy and/or guidance to assist state agencies in establishing a work-at-home policy that addresses the parameters of a work-at-home arrangement?

Appointing authorities are tasked with establishing the work sites for their respective employees based on the specific needs of the agency and the customers that they serve. Further, agencies may be obligated to provide such an arrangement to an employee as an accommodation under the Americans with Disabilities Act. DOP offers guidance and assistance to agencies who wish to implement policies specific to allowing employees to work from home. The specific location from which an employee performs work, however, has no impact on compliance with DOP law, rules, and policies so the agency has determined it to be unnecessary to implement a statewide policy. Should the State Legislature task the agency with this assignment, we would be pleased to oblige.

I trust that the information provided above will be helpful to you in your research. If you require anything further, please do not hesitate to contact me.

Sincerely,



Mary Jane Pickens  
Deputy Secretary

MJP/cn

cc: Sara Walker, Director  
Division of Personnel



STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION

EARI RAY TOMBLIN  
GOVERNOR

JASON PIZATELLA  
ACTING CABINET SECRETARY

December 23, 2015

Aaron Allred  
Legislative Auditor  
State Capitol Complex  
Building 1, Room E-132  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Mr. Allred:

Thank you for your letter dated December 15, 2015 concerning overtime compensation and its relationship to the employee premiums collected by the Public Employees Insurance Agency (PEIA). The responses below represent the best information that I have available to me as of the date above.

1. **Did PEIA consider changing the payment tier classifications to include additional compensation as well as the base pay? If so, please provide us with documentation of any studies performed as part of that consideration.**

Yes, the agency considered including additional compensation but was unable to develop a methodology that allowed for efficient billing and payroll withholding. One complicating factor, among many, is that non-State employees are included with State employees in the overall Fund and thus any changes in the methodology would apply globally to all who are insured by PEIA. As a result of the Legislative Post Audit Division study, however, the agency now updates the annual salary index code of State employees on a monthly basis.

2. **If PEIA did not consider changing the payment tier classifications to include additional compensation, what was the justification?**

The agency considered it and was unable to develop a methodology that allowed for efficient billing and payroll withholding. There would be numerous challenges in developing a change to the process, with employees of County Boards of Education representing the greatest challenge.

There was discussion with the wvOASIS project implementation team of possibly moving the premium model to a "percentage of pay" basis. The aforementioned challenges, however, of implementing and incorporating the County Boards of Education proved too great. The agency will continue to

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explore this potential change as well as other premium models, such as the concept of utilizing "total family income."

3. Is the new ERP system capable of reporting monthly total compensation including overtime to PEIA so adjustments can be made to the payment tier classification? If so, how is PEIA using that reporting option?

At the present time, wvOASIS reports a State employee's annual salary to PEIA that does not include overtime pay. The agency updates the salary index codes on a monthly basis. Questions concerning the capabilities of the ERP system should be directed to wvOASIS.

4. IF PEIA would base the rate for employee premiums on actual monthly earnings, as recommended, how much additional funding would be generated?

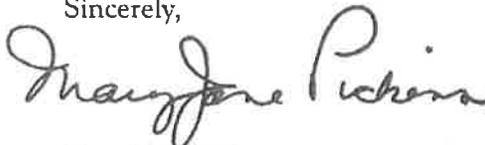
The agency is unable to answer this question because it does not have "actual monthly earning" information.

5. Under the current PEIA payment tier classification, an employee who earns a salary of \$52,000 pays more in premiums, deductibles, and out-of-pocket maximums, than an employee who salary is \$42,000 and earns an additional \$10,000 in overtime. Is it fair, that even though both employees have actually earned the same total compensation during the year, the employee who did not receive overtime pays more than an employee who did receive overtime?

The agency is aware that as long as there are multiple salary index code levels, there will always be scenarios that cause an employee to move between index codes. The agency does not have an opinion on the issue of "fairness." That is a decision better suited for the State Legislature.

PEIA will continue to work with all interested parties and research various methodologies such as including overtime, percentage of compensation and total family income. We welcome input from the Legislative Auditor on any or all of these concepts.

Sincerely,



Mary Jane Pickens  
Deputy Secretary

MJP/cjn

cc: Ted Cheatham, Public Employees Insurance Agency

## Monthly Premiums: Employee or Employee/Child

Premiums for employees of State agencies, colleges and universities and county boards of education are based on the employee's annual salary. The premiums listed here are charged monthly. For the PEIA PPB Plans, the out-of-network deductible and out-of-pocket maximum amounts are double the in-network amounts listed below. There are two (2) premium discounts available this year. Full details of the premiums discounts can be found on pages 29-30. Use the calculator on page 30 to determine your premium.

Employee Only	Health Plan			PEIA PPB Plan A		
	Plan A	Plan B	PPO	Premium	Annual Deductible	Out-of-Pocket Maximum
\$0 - \$20,000	\$88	\$37	\$49	\$53	\$125	\$800
\$20,001 - \$30,000	\$105	\$42	\$54	\$70	\$175	\$1,100
\$30,001 - \$36,000	\$112	\$45	\$57	\$77	\$225	\$1,250
\$36,001 - \$42,000	\$118	\$47	\$59	\$83	\$250	\$1,500
\$42,001 - \$50,000	\$133	\$53	\$65	\$98	\$275	\$1,750
\$50,001 - \$62,500	\$156	\$63	\$75	\$121	\$400	\$1,800
\$62,501 - \$75,000	\$170	\$70	\$82	\$135	\$425	\$1,850
\$75,001 - \$100,000	\$199	\$82	\$94	\$164	\$450	\$1,900
\$100,001 - \$125,000	\$242	\$120	\$132	\$207	\$525	\$2,000
\$125,001 +	\$272	\$142	\$154	\$237	\$625	\$2,250

Employee and Children	Health Plan			PEIA PPB Plan A		
	Plan A	Plan B	PPO	Premium	Annual Deductible	Out-of-Pocket Maximum
\$0 - \$20,000	\$174	\$63	\$76	\$110	\$250	\$1,600
\$20,001 - \$30,000	\$198	\$73	\$86	\$134	\$350	\$2,200
\$30,001 - \$36,000	\$207	\$76	\$89	\$143	\$450	\$2,500
\$36,001 - \$42,000	\$220	\$80	\$93	\$156	\$500	\$3,000
\$42,001 - \$50,000	\$254	\$102	\$115	\$190	\$550	\$3,500
\$50,001 - \$62,500	\$296	\$135	\$148	\$232	\$800	\$3,600
\$62,501 - \$75,000	\$328	\$155	\$168	\$264	\$850	\$3,700
\$75,001 - \$100,000	\$391	\$198	\$211	\$327	\$900	\$3,800
\$100,001 - \$125,000	\$454	\$251	\$264	\$390	\$1,050	\$4,000
\$125,001 +	\$511	\$291	\$304	\$447	\$1,250	\$4,500

## Monthly Premiums: Family or Family/Employee Spouse

Premiums for employees of State agencies, colleges and universities and county board of education are based on the employee's annual salary. The premiums listed here are charged monthly. For the PEIA PPB Plans, the out-of-network deductible and out-of-pocket maximum amounts are double the in-network amounts listed below. There are two (2) discounts available this year. Full details of the premiums discounts can be found on pages 29-30. Use the calculator on page 30 to determine your premium.

Family	Health Plan			PEIA PPB Plan A		
	Plan A	Plan B	PPO	Premium	Annual Deductible	Out-of-Pocket Maximum
\$0 - \$20,000	\$221	\$137	\$156	\$157	\$250	\$1,600
\$20,001 - \$30,000	\$270	\$164	\$183	\$206	\$350	\$2,200
\$30,001 - \$36,000	\$297	\$178	\$197	\$233	\$450	\$2,500
\$36,001 - \$42,000	\$326	\$194	\$213	\$262	\$500	\$3,000
\$42,001 - \$50,000	\$376	\$227	\$246	\$312	\$550	\$3,500
\$50,001 - \$62,500	\$443	\$270	\$289	\$379	\$800	\$3,600
\$62,501 - \$75,000	\$476	\$294	\$313	\$412	\$850	\$3,700
\$75,001 - \$100,000	\$561	\$363	\$382	\$497	\$900	\$3,800
\$100,001 - \$125,000	\$678	\$450	\$469	\$614	\$1,050	\$4,000
\$125,001 +	\$778	\$519	\$538	\$714	\$1,250	\$4,500

Family with Employee Spouse	Health Plan			PEIA PPB Plan A		
	Plan A	Plan B	PPO	Premium	Annual Deductible	Out-of-Pocket Maximum
\$0 - \$20,000	\$180	\$101	\$115	\$121	\$250	\$1,600
\$20,001 - \$30,000	\$217	\$118	\$132	\$158	\$350	\$2,200
\$30,001 - \$36,000	\$240	\$133	\$147	\$181	\$450	\$2,500
\$36,001 - \$42,000	\$259	\$142	\$156	\$200	\$500	\$3,000
\$42,001 - \$50,000	\$301	\$164	\$178	\$242	\$550	\$3,500
\$50,001 - \$62,500	\$355	\$198	\$212	\$296	\$800	\$3,600
\$62,501 - \$75,000	\$395	\$229	\$243	\$336	\$850	\$3,700
\$75,001 - \$100,000	\$489	\$304	\$318	\$430	\$900	\$3,800
\$100,001 - \$125,000	\$607	\$392	\$406	\$548	\$1,050	\$4,000
\$125,001 +	\$695	\$461	\$475	\$636	\$1,250	\$4,500