

**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2013 LEGISLATURE**

ACT 164, SECTION 133

OVERTIME COST

December 2012

**REPORT ON ACT 164, SECTION 133
OVERTIME COST**

- 1) **Amount budgeted for over time by program identification (ID)**
The relevant information is incorporated in the attached chart.

PROGRAM		Budgeted			
ID	PROGRAM TITLE	FY '13	FY '14	FY '15	FY '16
GENERAL FUNDS					
PSD 402	HCF	296,389	296,389	296,389	296,389
PSD 403	KCF	-	-	-	-
PSD 404	WCF	-	-	-	-
PSD 405	HCCC	-	-	-	-
PSD 406	MCCC	-	-	-	-
PSD 407	OCCC	550,920	550,920	550,920	550,920
PSD 408	KCCC	-	-	-	-
PSD 409	WCCC	-	-	-	-
PSD 410	ISC	-	-	-	-
PSD 420	CPS	-	-	-	-
PSD 421	HC	-	-	-	-
PSD 502	NED	19,561	19,561	19,561	19,561
PSD 503	SHERIFF	-	-	-	-
PSD 611	HPA - D	-	-	-	-
PSD 612	HPA - SC	-	-	-	-
PSD 808	NS	-	-	-	-
PSD 900	GEN ADMIN	120,000	120,000	120,000	120,000
TOTAL:		986,870	986,870	986,870	986,870
NON-GENERAL FUND MOE					
PSD 502	NED	W	9,483	9,483	9,483
		N	10,000	10,000	10,000
PSD 503	SHERIFF	N	-	-	-
		U	250,000	250,000	250,000

2) **Amount expended on overtime by program ID**
The relevant information is incorporated in the attached chart.

SECTION 133
DEPARTMENT OF PUBLIC SAFETY OVERTIME COSTS
ACTUAL EXPENDITURES ON OVERTIME FROM FY 2004 TO FY 2012 AND BUDGETED OVERTIME FOR FY 2013 TO FY 2016

PROGRAM ID	PROGRAM TITLE	Actual Expenditures									
		FY '04	FY '05	FY '06	FY '07	FY '08	FY '09	FY '10	FY '11	FY '12	
GENERAL FUNDS											
PSD 402	HCF	1,877,853	1,824,186	2,027,796	2,187,721	1,848,394	1,547,046	969,999	662,964	626,545	
PSD 403	KCF	165,249	194,384	243,861	362,488	365,073	352,108	124,261	-	-	
PSD 404	WCF	65,527	191,820	153,385	115,388	138,775	161,992	230,389	254,368	346,246	
PSD 405	HCCC	551,356	643,578	939,020	1,107,771	974,648	966,650	936,103	873,548	1,256,949	
PSD 406	MCCC	430,898	777,290	1,342,315	1,630,991	1,411,374	1,009,063	677,221	538,179	1,190,015	
PSD 407	OCCC	1,653,187	1,691,890	1,630,056	2,068,644	1,870,538	1,701,150	1,407,732	1,568,517	3,228,687	
PSD 408	KCCC	109,129	103,461	142,480	164,314	132,281	175,023	143,965	95,537	172,545	
PSD 409	WCCC	562,991	633,257	642,732	704,537	810,104	803,608	418,909	344,453	548,353	
PSD 410	ISC	3,829	1,243	3,831	2,046	37	225	-	-	(43)	
PSD 420	CPS	391,968	370,657	472,718	587,598	398,015	463,454	571,580	633,745	579,614	
PSD 421	HC	502,232	583,647	728,835	850,088	866,858	650,605	849,422	844,722	751,795	
PSD 502	NED	45,596	60,691	95,588	62,952	77,586	36,190	69,799	73,062	52,701	
PSD 503	SHERIFF	66,305	327,683	463,953	652,974	692,121	717,146	288,648	352,403	492,290	
PSD 611	HPA - D	-	144	-	-	-	-	-	-	-	
PSD 612	HPA - SC	57,885	121,918	69,324	66,524	27,707	14,684	16,018	17,287	23,869	
PSD 808	NS	-	-	-	-	2,102	-	920	-	-	
PSD 900	GEN ADMIN	195,409	215,692	252,930	208,543	221,888	205,820	125,809	134,151	72,261	
TOTAL:		6,679,414	7,741,541	9,208,822	10,772,579	9,837,501	8,804,764	6,830,775	6,392,936	9,341,827	
NON-GENERAL FUND MOF											
PSD 422	HCI	W	8,710	-	263	1,253	27,347	6,760	15,489	15,078	65,115
PSD 502	NED	W	7,319	16,337	49,906	30,326	34,998	17,504	28,502	29,251	23,883
		N						20,920	20,008	1,516	822
PSD 503	SHERIFF	N	4,718	51,028	8,093	2,385	-		168	-	-
		U	223,666	355,653	217,485	295,399	439,761	422,697	328,963	408,661	412,980
PSD 613	CVCC	B	4,518	7,121	8,585	6,716	2,695	756	14,739	19,017	9,255
		N						-	299	-	-

3) Explanation of the Department's plans to better reflect the true cost of overtime by submitting requests to the legislature to transfer funds currently being used for overtime from where the funds are budgeted to the overtime cost category.

The true cost of overtime is reflective of running a 24-hour institution and requiring certain staffing minimums for the safety of the public and staff and inmates. When Adult Corrections Officers (ACOs) are absent, there often is a requirement that a substitute to cover the post. This is to ensure that the inmates' constitutional rights are met and to protect the safety of the staff and the community.

It is not possible to predict how and when the staff will become sick. The Department allows staff to go on vacation and family leave because that is a mandate of the collective bargaining rights. We have instituted a policy with the UPW that limits the excessive hours that were taken off in earlier years and that limits leave without pay. Please see the attached the agreement.

We cannot afford to take from other operating costs and move the money to payrolls as the prisons and jails have a duty to feed, clothe, and provide medical services to inmates. In addition there are many programs that prepare inmates to enter back into the community without re-offending community members. Another example of where the Department needs funds is to make repairs and maintenance so that the staff is safe, and the inmates do not have issues that will make the state of Hawaii vulnerable to law suits.

4) Strategies the Department will use to reduce such expenditures in the future.

- The Department will continue to use the UPW agreement that has shown that it has reduced overtime and will continue to address the overtime issue on a facility by facility basis. It is noted that the effectiveness of this agreement has been greatly lessened by the ACOs' increased usage of the Family Medical Leave Act.
- The Department has mandated that correctional facilities establish work position plans that establish minimum staffing requirements, and circumstances under which overtime can be used.
- The Department will require managers to closely monitor overtime usage. Managers will be required to report the incidence of overtime attributable to type of staff absence and to unplanned events that require additional coverage.

MEMORANDUM OF UNDERSTANDING
Bargaining Unit 10
Attendance Program

30th This MEMORANDUM OF UNDERSTANDING is made and entered into on this day of *July*, 2010, by and between the Department of Public Safety, State of Hawaii (hereinafter "EMPLOYER") and the United Public Workers, AFSCME, Local 646, AFL-CIO (hereinafter "UNION") on behalf of Adult Corrections Officers (ACOs) in Bargaining Unit 10.

WHEREAS, the EMPLOYER and UNION recognize that attendance is important and essential in Correctional Facilities and Centers;

WHEREAS, the EMPLOYER and UNION recognize that attendance significantly impacts staffing at such facilities and centers;

WHEREAS, the EMPLOYER and UNION recognize that such significant impact on staffing includes, but is not limited to, daily staffing of shifts at facilities and centers, overtime, temporary assignments, etc.

WHEREAS, the EMPLOYER and UNION recognize that attendance ultimately affects the safety and health of those staff who show up for work, as well as the safety and health of inmates and general public;

WHEREAS, the EMPLOYER and UNION wish to resolve the matter and will hold Section 37.17b., Bargaining 10 Agreement, in abeyance with the implementation of this program;

WHEREAS, the EMPLOYER and UNION, in resolving the matter, agrees to hold in abeyance Section 37.04b., and 38A.11;

NOW, THEREFORE, the EMPLOYER and UNION agree as follows:

1. Unless specifically exempted below, this program will apply to any absence from work without pay, with or without authorization.
2. Since Section 37.04b. is held in abeyance, an Employee with zero balance for sick leave credits shall not have the option to use accumulated vacation leave or compensatory time for absences due to sickness.
3. Violations of Section 61.04a.6.a (Failure to provide 2 hour notification for essential posts) will not be subject to discipline under Section 38A.11c., but will be charged to unauthorized leave of absence without pay and be subject to the attendance program.

Memorandum of Understanding
Attendance Program
Page 2

4. When the Department decides to remedy an Employee on LWOP as provided by this document, such action shall be taken as follows:
- a. Each day of leave without pay (authorized or unauthorized), including partial LWOP day, shall be considered as one (1) LWOP/incident.
 - b. Each day shall be considered as leave without pay for payroll purposes and each day shall be considered as one incident and result in the following remedy and schedule:

<u>Levels of LWOP Day/Incident</u>	<u>Required Action</u>
1 st	Two (2) consecutive days of work
2 nd	Four (4) consecutive days of work
3 rd	Six (6) consecutive days of work
4 th	Eight (8) consecutive days of work
5 th	Ten (10) consecutive days of work
6 th	Twelve (12) consecutive days of work
7 th	Fourteen (14) consecutive days of work
8 th	Sixteen (16) consecutive days of work
9 th	Eighteen (18) consecutive days of work
10 th	Twenty (20) consecutive days of work
11 th	Twenty-two (22) consecutive days of work
12 th	Twenty-four (24) consecutive days of work
13 th	Twenty-six (26) consecutive days of work
14 th	Twenty-eight (28) consecutive days of work
15 th	Resignation with Stipulation that Employee not seek re-employment with Department

5. The consecutive days of work shall mean scheduled workdays. The Employee shall be allowed their scheduled days off during the application of the required action.
6. If the Employee does not show up/report for work during the imposed Required Action schedule, then the Employer shall conduct an investigation pursuant to the Department's investigative process developed to manage Section 38A.11 of the Bargaining Unit 10 Agreement.

The employee must still serve and complete the required number of work days imposed on the current required action.

Memorandum of Understanding
Attendance Program
Page 3

Once a determination is made that the Employee did not show up/report for work in accordance with the Required Action schedule, the remedy is to impose the next scheduled Required Action period per LWOP day/incident, up to and including 15th, resignation with stipulation that Employee shall not seek re-employment with Department.

7. The schedule of incident/required action shall be counted continuously for a period of two (2) years retroactive from the date of the most current violation.
8. Only those valid claims for federal and state benefits shall be exempt from this program, including military leave, family and medical leave act, worker's compensation, and TDI. Such exemption shall be for the purpose and period of the specific leave of absence only. During the exemption, the Employee who does not have accumulated sick leave shall have the option to use accumulated vacation leave or compensatory time as applicable.

Upon their return to work, those Employees who were granted an exemption from the program will continue their exemption for six (6) months to accumulate leave credits.

The exemption will include any LWOP that is Employer initiated under Section 11A, Leave Pending Investigation of Charges, suspensions, and Section 65, Alcohol and Controlled Substance Test.

9. Only those valid claims for LWOP resulting from catastrophic illness (e.g. cancer), injury (including serious medical procedures, e.g. surgery). Critical/serious illness or impairment which renders an employee unable to perform one or more activities of daily living as noted in Section 38A.08i.1. through and including 38A.08i.7, or other illnesses or circumstances as determined by the Department Head, or designee shall be exempt from this program.

Upon their return to work, those Employees who were granted an exemption from the program will continue their exemption for six (6) months to accumulate leave credits.

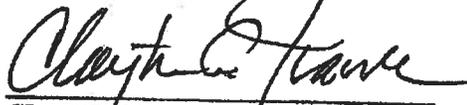
10. Copies of notices to Employees of the required action and the investigative reports shall be provided to the Union within forty-eight (48) hours.

Memorandum of Understanding
Attendance Program
Page 4

11. Employees shall be provided a copy of the DPS Form 7, Leave Attendance Record, with their current leaves balance. Thereafter, it shall be the Employee's responsibility to account for their individual leave balance for each request for leave of absence, including the submittal of the Form G-1, Application for Leave of Absence.
12. Reference attached Exhibit 1 for example of application of this Memorandum of Understanding.

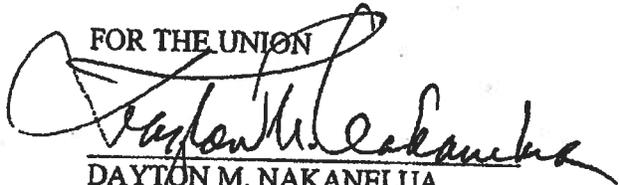
This MEMORANDUM OF UNDERSTANDING shall become effective on September 1, 2010 and shall remain in effect until June 30, 2011, unless the parties mutually agree to extend the duration of this MEMORANDUM OF UNDERSTANDING.

FOR THE EMPLOYER



CLAYTON A. FRANK
Director
Department of Public Safety

FOR THE UNION



DAYTON M. NAKANELUA
State Director
United Public Workers

"Attendance Program" Examples:

Example # 1 Partial Days

- 04/04/10 - Employee works 0600 to 1400
- 04/05/10 - Employee reports to work at 0700 (Tardy)
Does not have leave credits – Place on 1 hour Leave Without Pay (LWOP)

Employee charged with 1 incident – Required to work two (2) consecutive days

Example # 2 Full and Partial Days

- 04/05/10 - Employee works 2200 to 0600
- 04/06/10 - Employee reports in at 2200 and goes home sick at 0100
Does not have leave credits – Place on 5 hours LWOP
- 04/07/10 - Employee calls in sick (LWOP due to no leave credits)
- 04/08/10 - Employee calls in sick (LWOP due to no leave credits)
- 04/09/10 - Employee calls in sick (LWOP due to no leave credits)

Employee charged with 4 incidents – Required to work eight (8) consecutive days

Example # 3 Full Days

- 04/04/10 - Employee works 1400 to 2200
- 04/05/10 - Employee works 1400 to 2200
- 04/06/10 - Employee calls in sick (LWOP due to no leave credits)
- 04/07/10 - Employee calls in sick (LWOP due to no leave credits)
- 04/08/10 - Employee works 1400 to 2200

Employee charged with 2 incidents – Required to work four (4) consecutive days

Example # 4 Employee Serving Required Action

Employee is charged with 3 incidents – Required to work six (6) consecutive days from 7/5/10 through 7/12/10. During the "Required Action" period Employee calls in sick on 7/7/10 as follows:

- 7/5/10 - Employee required to work based on charge of prior incident
- 7/6/10 - Employee required to work based on charge of prior incident
- 7/7/10 - Employee required to work but calls in sick*
- 7/8/10 - Employee required to work based on charge of prior incident
- 7/9/10 - Employee required to work based on charge of prior incident
- 7/10/10 - Day Off
- 7/11/10 - Day Off
- 7/12/10 - Employee required to work based on charge of prior incident

- * **INVESTIGATE FAILURE TO REPORT TO WORK AS DIRECTED – EMPLOYEE CHARGED WITH A NEW INCIDENT**
(4 Incidents – Required to work eight (8) consecutive days)

Example # 5 Employee Serving 14th Incident / Required Action

Employee accumulates 14 LWOP Incidents and is serving twenty-eight (28) consecutive days of work requirement. During the twenty-eight (28) day period, Employee calls in sick one day.

Employee shall be RESIGNED with stipulation that the employee does not seek re-employment with the department.

Example # 6 Break of more than twenty-four (24) months between two (2) incidents

Counting Incidents for a Period of Two (2) Years Retroactive from the Date of Most Current Violation

- a. Employee is charged with three (3) incidents of LWOP on 8/15/10, 8/16/10, and 8/17/10. Employee is charged with another incident of LWOP on 9/17/11. This results in a total of four (4) incidents. Employee is charged with another incident of LWOP on 8/1/12. This results in to total of five (5) incidents.

The schedule of "Required Action" will continue and employee shall be required to serve the next "Required Action" level because there has not been a two (2) year period counting backward from the most current violation of 8/1/12 to the first violation of 8/15/10.

- b. Employee is charged with three (3) incidents of LWOP on 8/15/10, 8/16/10, and 8/17/10. Employee is charged with another incident of LWOP on 9/17/11. This results in a total of four (4) incidents. Employee is charged with another incident of LWOP on 10/12/12. This results in a total of two (2) incidents.

Employee is charged with only two (2) incidents of LWOP on 10/12/12 because the incidents of LWOP on 8/15/10, 8/16/10, and 8/17/10 have dropped off since they are older than 2 years and the only incident on record is that for 9/17/11.

MEMORANDUM OF UNDERSTANDING
Attendance Program
Bargaining Unit 10
Exhibit 1

The following represents examples of the application of the Memorandum of Understanding, Attendance Program. The following does not constitute all of the examples that may apply under the program, but represents application of the intent of the program as it applies to leave without pay.

Each day of LWOP (authorized or unauthorized), including partial days, shall be considered as one (1) LWOP incident.

The factors for determining incidents include:

- Failure to provide 2 hour notification for essential posts.
- Upon audit of Form G 1, Application for Leave of Absence, Employee did not have sufficient paid leave credits and resulted in LWOP.
- No show, no call.
- No approval of vacation leave.
- No mutual agreement for compensatory time off.
- No approval of authorized LWOP.
- No licensed physician certificate per Section 37.06
- Each day of LWOP including partial days and each day of failing to comply with imposed required action shall be considered as 1 incident.
- Other reasons as applicable.

Once a determination is made that the Employee is on LWOP in accordance with the Memorandum of Understanding, Attendance Program, an investigation will commence following the "Compliance with Memorandum of Understanding, Attendance Program", form.

Upon completion of the investigation, and a determination is made that the Employee did violate the Memorandum of Understanding, Attendance Program, the Director shall apply the applicable level of LWOP Day/Incident and Required Action. The Director shall notify the Employee of the Required Action by form written notice.

For example, ACO has 5 LWOP days applicable to this program, investigation is conducted and 5 LWOP days are confirmed as applicable to this program, then see Level of LWOP Days/Incident, go to 5th level and apply Required Action of Ten (10) consecutive days of work.

The ten consecutive days of work will be separated by the Employee's scheduled days off.

**Memorandum of Understanding
Attendance Program
Exhibit 1
Page 2**

If the Employee takes or has other LWOP incident(s), the process will be repeated and the remedy is to impose the next scheduled Required Action period per LWOP day/incident, up to and including 15th, resignation with stipulation that Employee shall not seek re-employment with Department.

For example, following the example noted above, during the ten (10) consecutive days of work, ACO has 4 LWOP days applicable to this program, again investigation is conducted and 4 LWOP days are confirmed as applicable to this program, then see Level of LWOP Days/Incident, go to 9th level and apply Required Action of Eighteen (18) consecutive days of work.

The fifteenth (15th) day/incident shall result in action to resign the Employee from employment. The resignation action may take place during the imposed consecutive days of work from a prior Required Action. The resignation includes a stipulation that Employee shall not seek re-employment with Department.

The schedule of incident/required action shall be counted continuously for a period of two (2) years retroactive from the date of the most current violation.

**Inter-Office
MEMORANDUM**

DEPARTMENT OF PUBLIC SAFETY

No. _____

Suspense: _____

Date

TO: Clayton A. Frank, Director
FROM: Program Administrator
SUBJECT: EXEMPTION FROM ATTENDANCE PROGRAM

Name of ACO: _____

Facility: _____

Dates of Absence: _____

Reason for Absence: _____

(Include whether employee was on Family Leave/ Work
Comp, etc. and attach physician's certificate(s).)

Recommended period of exemption:
Month/Year of exemption: From: _____ to _____

Current Sick Leave Balance: _____

Exemption from Attendance Program is:
Approved / Disapproved

Clayton A. Frank, Director

Date