



Florida Department of TRANSPORTATION

Office of Inspector General Kristofer B. Sullivan, Inspector General

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Kristofer B. Sullivan

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October 9, 2024

Audit Report No. 24P-006

HR Fair Labor Standards Act Overtime Determination Review Process

What We Did

The Office of Inspector General conducted an audit of the Florida Department of Transportation's (Department) Human Resource Office Fair Labor Standards Act (FLSA) Overtime Determination Review Process. The purpose of this engagement is to determine if the Department's policies, procedures, and guidance are in compliance with the FLSA Overtime Determination requirements. In addition, the purpose was to determine if the Department is compliant with determining employee job classifications in accordance with FLSA. Our review included testing of the FLSA Overtime Determination review to ensure they adhered to the program requirements. This audit was conducted as a part of our annual work plan for the fiscal year 2023–24.

What We Found

We determined the Department's policies, procedures, and guidance are in compliance with the FLSA Overtime Determination requirements.

We determined the Department is compliant with determining employee job classifications in accordance with FLSA.

What We Recommend

We have no recommendations at this time, as we found the areas under review to be compliant.

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BACKGROUND AND INTRODUCTION

The Florida Department of Transportation (Department) Human Resources (HR) Office coordinates and administers statewide HR Programs including recruitment and selection, classification and pay, benefits, attendance and leave, performance management, and employee relations. The HR Office provides support for the Department's employees, managers, and retirees from all districts throughout the state.

The classification team is responsible for ensuring all unit staff within the districts are trained in HR forms and processes as it relates to position classification. In accordance with Section 110.2035(5)(a), Florida Statutes (F.S.) (2023), a position description (PD) is required for all Career Service (CS), Selected Exempt Service (SES), and Senior Management Service (SMS) positions and serves as the official record of each established position within the Department. PD's should be updated for a newly established position and revised whenever there are changes to the position's supervisory/subordinate relationships, pay plan, classification, job requirements, duties and responsibilities, designators, or other key components of the job.

Under the Fair Labor Standards Act (FLSA), employees are either classified as exempt or nonexempt. Nonexempt employees are entitled to overtime pay; exempt employees are not. Employee FLSA misclassification is when employers deliberately classify workers as exempt in order to avoid paying federal law required overtime time and a half pay. Depending on the violation, the U.S. Department of Labor may impose civil and criminal penalties on the employer or result in back wages totaling many hundreds of thousands of dollars for violating FLSA overtime, minimum wage, and record-keeping requirements. To be considered "exempt," these employees must generally satisfy three tests:

1. Salary-level test. Employers must pay employees a salary of at least \$684 per week to qualify for the executive, administrative, and professional employee exemptions.
2. Salary-basis test. With very limited exceptions, the employer must pay employees their full salary in any week they perform work, regardless of the quality or quantity of the work.
3. Duties test. The employee's primary duties must meet certain criteria.

Florida FLSA Classification

Section 110.2035, F.S., authorizes the State Personnel System classification and compensation program for positions in the CS, SES, and SMS. In addition, Rule Chapter 60L-31, Classification Plan, Florida Administrative Code (F.A.C.), addresses management of the classification system, and Rule Chapter 60L-32, Compensation and Benefits, F.A.C., addresses management of salary and other benefits.

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Department Authority/Responsibilities

The Department is to properly apply the classification and compensation statutory requirements and rules promulgated by the Department of Management Services. They are to maintain an accurate and current PD for each authorized and established position assigned to the agency as a record of the official assignment of duties to the position, and to properly classify or reclassify CS authorized positions.

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RESULTS OF REVIEW

The purpose of this engagement was to determine the following:

1. If the Department's policies, procedures, and guidance are in compliance with FLSA Overtime Determination requirements.
2. If the Department is compliant with determining employee job classifications in compliance with FLSA.

Each finding addresses these objectives.

Finding 1 – Department's Policies, Procedures, and Guidance Regarding FLSA Overtime Determination

We determined the Department's policies, procedures, and guidance are in compliance with the FLSA Overtime Determination requirements.

Criteria for FLSA Overtime Determination:

- 29 USC § 201-219 Department of Labor (DOL), Wage and Hour Division – provides for the establishment of fair labor standards in employment and affecting interstate commerce, and for other purposes;
- FLSA-DOL FACT sheet 17A – provides general information on exemptions from minimum wage and overtime pay;
- FLSA-DOL FACT sheet #23 – provides general information concerning the application of the overtime pay provisions of the FLSA;
- HR Desktop Procedure – FLSA 1.7.20 – includes checklist that must be completed and attached to every PD if the duties are changing; and
- Code of Federal Regulations 541 (C.F.R. 541) – defines and delimits the exemptions for Executive, Administrative, Professional, Computer, and Outside Sales Employees.

Additional reference materials:

- FLSA White Collar Exemption Checklist¹ – form to be completed if job duties are changing or is a new position;
- PD training materials on HR Office SharePoint – training for Department staff on HR forms and processes; and
- PD Processing System User Guide – explains how to process PD's in the PD Processing system.

We evaluated the Department's policies and procedures with federal and state requirements. We then evaluated the Department's PD processing system to ensure the

¹ Document from DOL providing general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the FLSA as defined by CFR 541.

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process adhered to the Department's requirements as well as federal and state requirements regarding FLSA Overtime Determinations.

Federal Rules, State Statutes, and Guidance for FLSA Overtime Determination

The FLSA Regulation requires employees to be paid for all hours worked and overtime pay at time and a half the regular rate of pay for all hours worked over 40 hours in a workweek. However, Section 13 (a)(1) of the FLSA provides an exemption from overtime pay for employees employed as bona fide executive, administrative, professional, and outside sales employees. Section 13 (a)(1) and Section 13 (a)(17) also exempt certain computer employees. To qualify for exemption, employees must be paid on a salary basis at not less than \$684 per week (\$1,368 bi-weekly), which is equivalent to \$35,568 per year, then meet certain tests regarding their job duties.

Highly compensated employees performing office or non-manual work and who customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee and are paid total annual compensation of \$107,432 or higher, are exempt from FLSA.

In accordance with Chapter 110.2035(5)(a), F.S., a PD is required for all CS, SE, and SMS positions and serves as the official record of each established position within the Department.

Department Policy, Procedure, and Guidance Compliance with FLSA Overtime Determination

We analyzed 11 FLSA Overtime Determination requirements to the HR Office procedures in place.

Title 29 Subtitle B Chapter V Subchapter A Part 541:

1. Subpart A- 541.2 Job titles insufficient;
2. 541.3 Scope of Section 113(a)(1) exemptions;
3. Subpart B- Executive Employees - 541.101 Two or more other employees;
4. Subpart C- Administrative Employees- 541.200 General rule for administrative employees;
5. 541.203 Administrative exemption examples;
6. Subpart G- Salary Requirements - 541.600 Amount of salary required;
7. 541.601 Highly compensated employees;
8. 541.602 Salary Basis;
9. 541.603 Effects of improper deductions from salary;
10. Subpart H- Definitions and Miscellaneous Provisions - 541.700 Primary duty; and
11. 541.702 Exempt and nonexempt work.

Based on our review of the 11 FLSA requirements, **we determined** the HR Office has incorporated the 11 requirements into the Department's policies and procedures.

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We have no recommendation at this time, as we found the area under review to be compliant.

Finding 2 – Department’s Compliance with Determining Employee Job Classifications in Accordance with FLSA.

We determined the Department is compliant with determining employee job classifications in accordance with FLSA.

Criteria for FLSA Overtime Determination:

1. C.F.R. 541 – defines and delimits the Exemptions for Executive, Administrative, Professional, Computer, and Outside Sales Employees; and
2. Position Description Processing – Desk Process.²

PD Requirements

In accordance with Chapter 110.2035(5)(a), F.S., a PD is required for all CS, SES, and SMS positions and serves as the official record of each established position within the Department.

PD’s should be updated for a newly established position and revised whenever there are changes to the position’s supervisory/subordinate relationships, pay plan, classification, job requirements, duties and responsibilities, designators or other key components of the job duties.

PD Review for Compliance

Based on the PD Requirements above, during calendar year 2023, 292 positions required overtime determinations to be made. We randomly selected a sample of 10% (30) of the Overtime Determination checklists to confirm if the HR-Overtime Determinations were correctly completed. We completed a FLSA White Collar Exemption Checklist for our sample and compared these to the Department’s HR completed FLSA checklists.

After testing 30 of the FLSA determinations made by the Department’s HR, we found all 30 of the checklists we tested were in accordance with FLSA Overtime Determination requirements.

We have no recommendation at this time, as we found the area under review to be compliant.

² HR guidance for the HR staff reviewing position descriptions.

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APPENDIX A – Purpose, Scope, and Methodology

The **purpose** of this engagement is to determine if the Department’s policies, procedures, and guidance are in compliance with FLSA Overtime Determination requirements. In addition, the purpose was to determine if the Department is compliant with determining employee job classifications in accordance with FLSA.

The **scope** of this audit included:

- 29 USC § 201-219 DOL, Wage and Hour Division;
- HR Desktop Procedure – FLSA 1.7;
- Title 29 – Labor, Part 541, C.F.R., Regulations Relating to Labor, Wage and Hour Division, DOL; and
- Calendar Year 2023.

The **methodology** included:

- reviewing applicable federal and state laws and requirements;
- reviewing applicable Department policies and procedures; and
- examining a sample of PD’s and checklist exemptions.

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APPENDIX B – Management Response

On October 4, 2024, the OIG received an email response from Jeri Booker, Deputy Director, indicating the Human Resources Office does not have any comments.

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PROJECT TEAM

Engagement was conducted by:
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Under the supervision of:
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Approved by:
Kristofer B. Sullivan, Inspector General

STATEMENT OF ACCORDANCE

The Department's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities.

The Office of Inspector General's mission is to provide independent and objective investigative and audit services that promote accountability, integrity, and efficiency within the Florida Department of Transportation and its partners.

This work product was prepared pursuant to section 20.055, Florida Statutes, in accordance with the Association of Inspectors General *Principles and Standards for Offices of Inspector General*, and conforms with The Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

Please address inquiries regarding this report to the Department's Office of Inspector General at (850) 410-5800.