



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS

MEMORANDUM

DATE: October 18, 2016
TO: Patent Examining Corps
FROM: *Andrew Faile*
Andrew Faile, Deputy Commissioner for Patent Operations
SUBJECT: Overtime Policy for Patent Examiners

This Memorandum supersedes the March 26, 1990 "Overtime Policies for Professional and Clerical Employees Under the Assistant Commissioner for Patents," signed by James E. Denny, as it applies to patent examiners. It is to be read and applied in conjunction with any other applicable policies on overtime authorization.

The following is a statement of the policies regarding the authorization and working of overtime hours for patent examiners. Overtime pay is pay for hours of work officially authorized by management. Meeting or exceeding production goals does not excuse an employee from the requirement to work the time claimed in WebTA. On a bi-weekly basis and in advance, each Technology Center Director or equivalent, will approve an overtime authorization list (CD-81) identifying those examiners authorized to work overtime hours for that pay period and the maximum number of hours authorized for each individual. Each Technology Center Director or equivalent is responsible for ensuring that these policies are enforced.

- 1) Examiners will be limited to 32 hours of overtime each bi-weekly pay period unless the statutory and regulatory limits on aggregate pay, budgetary limitations, or the available workload precludes overtime or dictates a lower limit. Individual exceptions to the 32-hour limit may be authorized by the Technology Center Director or equivalent in limited situations (a) where an individual can demonstrate the ability to efficiently work at a higher limit, or (b) to meet specific needs of the Office.
- 2) Overtime hours may be worked on any day of the week including Saturdays, Sundays and holidays. A maximum of 12 hours, including the regular duty hours on a workday (or hours counting toward the 80 hour biweekly requirement for IFP) and overtime hours, may be worked on any day. Overtime hours may not begin before 4:30 AM and must be completed by 11:30 PM. Overtime can be worked in fifteen minute increments.

No more than 6 consecutive hours, of any combination of regular duty hours or overtime hours, are permitted in the absence of an uncompensated 1/2 hour meal break. Any meal time is not payable as regular time worked or as overtime hours.

- 3) An examiner must be performing at least at the fully successful level in all critical elements, i.e. production, quality and docket management, of his/her performance appraisal plan (PAP) before being authorized to work overtime hours.



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Bi-weekly authorization will be granted during the first quarter of the fiscal year based on at least fully successful performance of all critical PAP elements during the previous fiscal year, unless an examiner fails to achieve the fully successful level in any critical element during the fourth quarter of the previous fiscal year. Furthermore, an authorization granted for the first quarter of the fiscal year may be rescinded during that period if the examiner's performance warrants removal of the authorization to work overtime hours.

Moreover, if an examiner fails to achieve the fully successful level in any critical PAP element for any given quarter, he/she will be prohibited from working overtime hours for the following quarter.

Additionally, on a bi-weekly basis during the second, third, and fourth quarters of the fiscal year, if an examiner's year-to-date productivity or year-to-date docket management achievement falls below the fully successful level, he/she will be prohibited from working overtime hours. Once the year-to-date achievement is brought up to the fully successful level, on a bi-weekly basis, the examiner will again be authorized to work overtime hours.

An examiner will be prohibited from working overtime hours during any pay period in which the examiner serves a suspension. If the examiner is under active investigation or proposal for disciplinary or adverse action for time and attendance, work schedule or work credit abuse, an examiner may be temporarily prohibited from working overtime hours. This temporary prohibition of working overtime hours will last no longer than 100 days from the date notified of the investigation or proposal, unless the issue is referred to the Inspector General or the Department of Justice.

First-year examiners, to be authorized to work overtime hours, will be required to demonstrate effectiveness in producing the required quality, pendency and quantity of the work product in an independent manner.

Individual exceptions to the above performance standards may be granted by the Technology Center Director or equivalent only in exceptional circumstances.

- 4) On a day when an examiner has requested to use sick leave due to the examiner's own illness, the examiner must obtain prior approval from their supervisor in order to work overtime hours.