



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Overtime Program,
Department of Law and Public Safety

Administrative Appeal

CSC Docket No. 2021-1527

ISSUED: MAY 24, 2021 (SLD)

The Division of Agency Services (Agency Services), on behalf of the Department of Law and Public Safety (DL&PS), Division of State Police, Criminal Justice Records Bureau and Discovery Unit, requests that the provisions of *N.J.A.C. 4A:3-5.3* be relaxed to provide certain individuals in non-limited, non-exempt (NE) titles, cash compensation at the regular rate for hours worked between 35 hours and 40 hours, and cash compensation at one and one-half times the regular rate for hours worked over 40 hours.

In its request, DL&PS explains that under the Bail Reform and Speedy Trial Act, the State has 90 days to indict a defendant who has been detained and another 180 days to bring the case to trial. DL&PS argues that if its request is not granted, the failure to provide discovery in the mandated timeframes would result in criminal cases being dismissed for lack of prosecution in addition to the detrimental consequence of enabling defendants to avoid prosecution for the crimes committed. Moreover, the DL&PS noted that in December 2019 there was a four-month, 8,000 file backlog, and that currently there is a three-month, 6,000 file backlog in discovery requests. The DL&PS maintains that this backlog in discovery requests could result in records not being accessible to other units conducting mandated court ordered checks. For example, lab reports would not be available to Forensics, firearms records will not be updated which could result in an individual receiving a firearm when he or she has been banned from owning a firearm, an individual could potentially pass a background check when they should not, and a case could be dismissed in court for lack of discovery or a fingerprint card not being accessible to potentially identify a criminal. DL&PS explains that because the employees are only entitled to

compensatory time off between 35 and 40 hours worked, it leads to more time that the employees are out of the office and the more backlog and overtime costs it creates. Therefore, it requests that the provisions of *N.J.A.C.* 4A:3-5.3 be relaxed to provide cash compensation at the regular rate for hours worked between 35 hours and 40 hours, and cash compensation at one and one-half times the regular rate for hours worked over 40 hours to the following individuals:

<u>NAME</u>	<u>TITLE</u>	<u>LOCATION</u>
Dana Lugo	Investigator 1, Law and Public Safety	Discovery Unit
Thomas Labelle	Investigator 1, Law and Public Safety	Discovery Unit
Stephen Mahony	Investigator 1, Law and Public Safety	Discovery Unit
Joseph Park	Investigator 1, Law and Public Safety	Discovery Unit
Christopher Sawasky	Investigator 1, Law and Public Safety	Discovery Unit
John Ragno	Investigator 1, Law and Public Safety	Criminal Justice Bureau
Catherine Brown	Technical Assistant 1	Discovery Unit
Lisa Fackenthall	Technical Assistant 1	Discovery Unit
Maryanne Seward	Technical Assistant 2	Discovery Unit
Stephanie Tomlin	Technical Assistant 2	Discovery Unit

Based on these circumstances, Agency Services indicated its support of DL&PS' request.

CONCLUSION

N.J.A.C. 4A:3-5.5(a)1 and *N.J.A.C.* 4A:3-5.5(b)1 provide, in pertinent part, that employees in NE titles are entitled to overtime compensation at the rate of one and one-half times their regular rate of pay "for time worked in excess of 40 hours per week" with the approval of the Civil Service Commission or designee. However, per *N.J.A.C.* 4A:3-5.3(d)2, for work performed in excess of 35 hours per week, up to 40 hours, employees in NE titles are only entitled to comparable amounts of time off, not cash overtime compensation.

N.J.A.C. 4A:1-1.2(c) provides that a rule may relaxed for good cause, in a particular circumstance, in order to effectuate the purposes of Title 11A of the New Jersey Statutes Annotated.

Due to required time-frames under the Bail Reform and Speedy Trial Act, it is appropriate to permit the above indicated NE employees who work more than 40 hours in a week to receive cash overtime per *N.J.A.C.* 4A:3-5.5(a)1 and *N.J.A.C.* 4A:3-5.5(b)1. Further, under these particular facts and circumstances, it is also appropriate to relax the provisions of *N.J.A.C.* 4A:3-5.3 and permit the DL&PS, Division of State Police, Criminal Justice Bureau and Discovery Unit, to provide the above indicated individuals, cash compensation at the regular rate for hours worked between 35 and 40 hours until November 30, 2021.

ORDER

Therefore, it is ordered that this request be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF MAY, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
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