



**STATE OF NEW JERSEY**

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

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

CSC Docket No. 2024-2651

Administrative Appeal

**ISSUED: July 24, 2024 (SLD)**

The Division of Agency Services (Agency Services), on behalf of the Department of Law and Public Safety (DL&PS), Division of State Police, Office of Forensic Sciences, requests that the provisions of *N.J.A.C. 4A:3-5.3* be relaxed to provide individuals in the non-limited (NL) title of Forensic Scientist 3,<sup>1</sup> cash compensation at one and one-half times the regular rate for hours worked in excess of 35 hours.

By way of background, the Civil Service Commission (Commission) has previously relaxed the provisions of *N.J.A.C. 4A:3-5.3* to allow DL&PS to utilize Capacity Enhancement and Backlog Reduction (CEBR) funds for the overtime of the non-limited, non-exempt (NE) employees in the DNA laboratory, in the titles of Forensic Scientist 1 and Forensic Scientist 2 within the Office of Forensic Sciences. *See, In the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided March 20, 2024); *In the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided August 23, 2023); *In the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided November 17, 2021); *In the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided November 4, 2020); *In the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided January 15, 2020); *In*

<sup>1</sup> In the prior decisions, the titles were referred to as Forensic Scientist, DL&PS. However, the name of the title series was changed to Forensic Scientist.

*the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided January 16, 2019); *In the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided May 3, 2017); and *In the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided December 7, 2016). In its most recent decision, the Commission noted that DL&PS had explained that a new requirement of the Fiscal Year 2023 CEBR grant required that a minimum allocation of 40% of the total award must be for the analysis of samples for entry into CODIS. DL&PS further maintained that in order to maximize grant funding, a portion of the funds (\$515,000) was earmarked for overtime for 24 employees to address the approximately 1,260<sup>2</sup> backlog cases pending analysis in the DNA laboratory. Therefore, the Commission found it appropriate to relax the provisions of *N.J.A.C. 4A:3-5.3* and permit the DL&PS, Division of State Police, Office of Forensic Sciences, to provide individuals in the titles of Forensic Scientist 1 and Forensic Scientist 2, cash compensation at one and one-half times the regular rate for hours worked between 35 and 40 hours until September 30, 2025, or until all \$515,000 of the earmarked funds were expended, whichever occurred first.

In the instant request, DL&PS notes that as a result of the most recent decision, it had made significant progress in processing DNA cases, noting that as of April 15, 2024, it was able to complete 1,093 cases as compared to 515 cases for the same period in 2023. DL&PS notes that there are currently eight employees in the Forensic Scientist 2 title in the DNA laboratory, only five of whom conduct casework review. It explains that it has approval to fill 10 Forensic Scientist 3 vacancies, and it is likely that some personnel from the DNA laboratory will be promoted from the Forensic Scientist 2 title to the Forensic Scientist 3 title. DL&PS argues that as a result, the ability to review and approve DNA Analysis cases will be inhibited as will the ability to utilize the earmarked federal funding, making the Commission's most recent decision ineffectual. It also argues, that as a result, the backlog reduction would slow and could potentially increase, depending on personnel attrition. DL&PS maintains that by extending the rule relaxation to the Forensic Scientist 3s, it would allow the DNA laboratory to meet the minimum eligibility requirements for the CEBR grant, while also reducing the backlog and improving turnaround time. Based on these circumstances, Agency Services indicated its support of DL&PS' request and requested that *N.J.A.C. 4A:3-5.3* be relaxed until September 30, 2025.

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<sup>2</sup> In *In the Matter of Overtime Program, Department of Law and Public Safety, Division of State Police* (CSC, decided August 23, 2023), the noted backlog was 1,400 cases.

## CONCLUSION

*N.J.A.C.* 4A:3-5.3 provides in pertinent part that:

- (a) Employees in the following groups may be eligible for overtime compensation for work performed beyond their regular work hours, but not more than 40 hours:

\* \* \*

3. Employees in non-limited titles (NL, NE) who meet unusual work time requirements, at the discretion of the appointing authority.

\* \* \*

- (c) An employee shall be eligible for overtime compensation under this section only when:

1. The employee is in pay status for the full number of hours in his or her regular workweek;
2. The employee works at least one hour beyond the regular workweek or approved alternative workweek program of 70 hours in a 14 day work period, for employees in 35 hour fixed workweek titles (35, 3E); and
3. The work is covered by the job specification for the employee's title, except for emergencies as provided in *N.J.A.C.* 4A:3-5.7(d).

- (d) Overtime compensation under this section shall be paid as follows:

\* \* \*

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or

equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation. In no event shall employees in non-limited titles have any entitlement to cash overtime compensation.

*N.J.A.C.* 4A:3-5.6(a)3 provides, in pertinent part, that employees in NL titles shall not be eligible for cash overtime compensation, except as provided in *N.J.A.C.* 4A:3-5.7(d).<sup>3</sup> *N.J.A.C.* 4A:3-5.6(b)2 provides, in pertinent part, that employees in NL titles:

. . . who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work time patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, provided that employees serving as a commissioner or department head an assistant or deputy commissioner a division director or equivalent; and employees in exempt positions in titles which are no represented in collective negotiations with established salary ranges at or above range 32, and in such exempt position in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation. *See N.J.A.C.* 4A:3-5.7(e)2.

*N.J.A.C.* 4A:3-5.7(d) provides, in pertinent part that, eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. When an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, he or she may authorize:
  - i. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 32 performing emergency related work. For these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.

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<sup>3</sup> Compare, *N.J.A.C.* 4A:3-5.5(a)1 and *N.J.A.C.* 4A:3-5.5(b)1 which provide, in pertinent part, that employees in NE titles are entitled to overtime compensation, "either in cash payment or compensatory time off," 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 Commission or designee.

- ii. Overtime compensation for work not covered by the job specification. *See N.J.A.C. 4A:3-5.3(c)3.*
- 2. An agency head shall file with the Chairperson or designee two reports concerning an exceptional emergency as follows:
  - i. Within seven days of the declaration of the exceptional emergency, a fully detailed justification for the declaration. The report shall describe the critical services which could have been or were disrupted and what dangers were posed to health or safety.
  - ii. Within 30 days of the conclusion of the exceptional emergency, a list of the names, titles, hours of work designations and number of hours of emergency related overtime work of employees who performed emergency related work on an overtime basis.
- 3. These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal, or other related work in situations that constitute unreasonable safety hazards to the public, employees, other persons, or property of the State. The Chairperson or designee shall establish emergency condition rates for these circumstances.

*N.J.A.C. 4A:3-5.7(e)* provides, in pertinent part that, eligibility for special project rate compensation shall be as follows:

- 1. If an employee works on a part time, occasional, or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation. Such employment may be paid at special project rates as approved by the Chairperson or designee.
- 2. NL and N4 employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the Chairperson or designee.

3. A fully detailed justification for a special project for which (e)1 or 2 above would be applicable must be filed with the Chairperson or designee for review and approval.

*N.J.A.C.* 4A:3-5.2 defines “Cash overtime compensation” as payment at a rate of one and one-half times the hourly proration of the employee's base salary, or one and one-half times the employee's regular rate, as specified.

*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.

Initially, it is noted that *N.J.A.C.* 4A:3-5.6(a) provides that NL employees shall *not* be eligible for cash overtime, except as provided in *N.J.A.C.* 4A:3-5.7(d). Further, DL&PS has not established that there has been or is an ongoing exceptional emergency which would entitle those certain NL employees promoted to the Forensic Scientist 3 to cash overtime compensation. Rather, DL&PS, explains that due to the possibility of promotions, some of the five individuals who are currently in the title of Forensic Scientist 2, and who are currently receiving overtime compensation pursuant to the previous decisions, may be promoted to the title Forensic Scientist 3, prior to the September 30, 2025 expiration date, or until all \$515,000 of the earmarked funds are expended from the CEBR grant. Therefore, it contends that it would need those same individuals to continue to perform the overtime duties. However, the possibility that some of the five employees currently serving in the title of Forensic Scientist 2, and who are currently receiving the overtime compensation, may be promoted, does not establish an ongoing “exceptional emergency.” As such, the NL employees would not be entitled to cash overtime. Nor is there a basis to relax the provisions of *N.J.A.C.* 4A:3-5.7(d) under these circumstances. Therefore, DL&PS’ request cannot be granted.

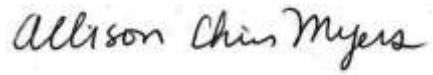
***However***, DL&PS *can* compensate those NL employees through either a provision for flexible work time patterns or a grant of comparable amounts of time off, on an hour for hour basis. See *N.J.A.C.* 4A:3-5.6(b)2. Alternatively, DL&PS could request approval from the Chairperson or designee to provide a special project rate compensation pursuant to *N.J.A.C.* 4A:3-5.7(e)2.

## ORDER

Therefore, it is ordered that this request be denied.

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 24<sup>TH</sup> DAY OF JULY, 2024



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