

OFFICE OF THE CHIEF OF POLICE

NOTICE  
2.1

June 29, 2005

TO: All Department Employees

FROM: Chief of Police

SUBJECT: OBLIGATION OF ALL EMPLOYEES TO ENSURE COMPLIANCE WITH  
THE FAIR LABOR STANDARDS ACT

This Notice reiterates the obligation of all employees to comply with the provisions of all Department Notices, policies, and training designed to ensure Department compliance with the Federal Fair Labor Standards Act (FLSA). Office of the Chief of Police Notices dated August 27, 2001, and March 28, 2003, as well as the Employee Relations Administrator Notice dated January 23, 2004, are still in effect and have been binding on all employees since their publication. Following are selected rules from the Notices as well as additional overtime guidelines. **In the event there is a conflict between any of these Notices, the policies and procedures as stated in this Notice shall take precedence.**

For sworn employees at the rank of Lieutenant and below (including those with supervisory responsibilities) and civilian employees who are eligible to receive overtime compensation:

- No work may be done outside the employee's scheduled work hours unless approved in advance by his/her immediate supervisor. Court appearances and emergency situations requiring immediate law enforcement intervention are exceptions. In emergencies, the employee shall notify a supervisor of his/her overtime status as soon as the incident allows the employee to do so, but in no event later than the end of the employee's scheduled end of watch for that day.
- The employee shall not perform Department duties outside his/her scheduled work hours without promptly submitting an overtime report. **The Department has no "unwritten" policy that officers should work overtime without compensation. Department policy is that all legitimate overtime shall be compensated. Anyone who believes that they are being "pressured" or coerced to work overtime without compensation shall report the facts to the authority in their chain of command above the source of the "pressure" or coercion, or to Professional Standards Bureau.**

**NOTE TO SUPERVISORS:** Per the FLSA, hours worked must be compensated, and the employer is liable for such if they knew or should have known that the employee worked. We have instituted rules for working overtime because we do not have an unlimited overtime budget. One such rule is that overtime work must be pre-approved. However, you **cannot** deny a request for overtime compensation because our rule was broken. You must approve the overtime request. What you then must do is discipline the employee for not following the rules. The goal of the discipline should be to change the employee's behavior, however, any disciplinary action taken for violating the FLSA

and/or Department policies and procedures as stated in this directive shall be in writing. It can range from a comment card to the initiation of a complaint.

- Employees shall take their Code-7 or similar time off during their watch. Employees who submit daily logs (Daily Field Activity Reports [DFARs], Sergeant's Daily Reports, or Watch Commander's Daily Reports) shall document their start of watch time, the actual time they started work if prior to their official start of watch, the time of their Code-7 (or the time when Code-7 was requested and denied), and their end of watch time (which means the actual time they ceased working on any Department business). Employees who do not submit daily logs shall document the time of their Code-7, as well as their start and end of watch times (which means the time they started working and ceased working, regardless of their official scheduled work hours), on their divisional or section sign-in/out log. If no such log exists, the employee shall notify his/her supervisor. The supervisor shall then immediately implement a log, and shall provide a copy to his/her commanding officer.

**NOTE TO SUPERVISORS:** Again, we have rules employees must follow to request overtime compensation for missed or interrupted Code-7 (free time). For example, we generally ask our patrol officers to request Code-7 over the air twice, and then seek approval from the watch commander if they are denied Code-7. Regardless if our employees follow or **do not** follow these rules, if they do not get their official "free time" (regardless of whether or not they actually ate), we **must** pay them for it. Supervisors who review and approve DFARs and sign-in/out sheets must ensure that employees are compensated for missed Code-7. Again, we **cannot** deny employees overtime compensation for hours worked. What supervisors can, and must do, is discipline employees for not following our rules, and you must document it. Any discipline for such activity is not retaliation for requesting overtime compensation in accordance with the FLSA; it is for violating Department policies and procedures.

- Civilian employees assigned to the 9/80 schedule shall not move or adjust their 8-hour "modified" day off after selecting that schedule.
- To account for all hours (or fractions of hours) worked by all employees, all time worked, whether pre-approved or not, shall be documented. This means that all employees who complete a DFAR, Sergeant's or Watch Commander's Daily Report, sign-in/out sheet, log book, or any other record of their time, shall include their official start of watch time, the actual time they began work on Department business (if earlier than their official start of watch), and their end of watch time (which means the actual time they ceased working on any Department business). Failure to do so is serious misconduct. **Failure to request overtime compensation for any overtime worked, whether pre-approved or not, is also serious misconduct.**

**NOTE:** Since all employees are now officially notified that all hours worked must be recorded on their official Department time-keeping record (DFAR, Sergeant's or Watch Commander's Daily Report, sign-in/out sheet, etc.), any subsequent claim by an employee that they worked additional hours contiguous with their regular work schedule that are not included on their time-keeping record will constitute prima facie evidence

that the employee falsified their official time-keeping document and will result in the initiation of a complaint.

- Under no circumstances may an employee who is eligible to receive overtime compensation record or maintain overtime hours in an informal manner commonly referred to as “white time” or any other method that is inconsistent with established Department policies and procedures.
- All supervisors (including sworn and civilian command and staff officers) shall monitor the activities of their subordinates at the rank of Lieutenant and below and civilian employees who are eligible to receive overtime compensation to ensure those employees are not working unapproved or uncompensated overtime. This includes making reasonable inquiries to determine whether their employees are taking Department work home to complete without compensation or supervisory approval, taking the appropriate Code-7 or free-time, or otherwise working outside their scheduled shift or watch.

**NOTE TO SUPERVISORS:** Per the FLSA, employees **cannot** choose to work and then not request compensation. If you see employees around your office or station during hours that are not part of their normal work hours and it appears that they may be working, it is your responsibility to find out what they are doing. If they are working on Department business and are doing it without pre-approval, they are violating Department policies and procedures. You must then ensure that they are compensated for the time worked, you must take appropriate disciplinary action, and you must document it.

- It is misconduct to unnecessarily inhibit by action, statement, or other means any employee’s legitimate submission of a report of lawfully earned overtime. Statements to the effect that one-tenth of an hour or “No Code-7” overtime slips somehow reflect unfavorably upon the employee submitting them are inappropriate. If the employee worked the overtime, even for one-tenth of an hour, and was authorized to work the overtime, then the employee is required to submit for the overtime, and shall do so without adverse comment or action. (If the employee was not authorized to work the overtime and it was legitimate Department business conducted by the employee, it shall still be compensated, but as indicated previously, appropriate disciplinary action shall be initiated against the employee for violating Department policies and procedures regarding obtaining advance approval for working overtime.)

**NOTE:** Employees who request overtime compensation for hours or fractions of hours worked and are denied compensation, regardless if the overtime was pre-approved or not, shall notify their commanding officer as soon as practicable, or in the event their commanding officer denied the overtime request, their Bureau commanding officer. **Failure to compensate an employee for hours worked constitutes serious misconduct and will be dealt with as such.**

- Watch commanders and watch supervisors shall not work uncompensated overtime to prepare for roll call or any other duties. If a supervisor or watch commander needs to report for roll call preparation prior to the start of their scheduled shift, they shall normally obtain prior approval from their immediate supervisor. If a watch commander or supervisor

receives approval to report early for a shift, their schedule ordinarily shall be adjusted so that they work their normal number of hours. (If they come in early by a certain number of minutes, their end of watch should be earlier by the same number of minutes.) If the schedule is not adjusted, the employee shall obtain prior approval from their superior officer specifically to work the overtime. **Any employee who performs overtime work after a supervisor has refused to authorize overtime, and any supervisor who knowingly permits such work to occur, is engaging in serious misconduct.**

Any knowing violation of these rules, or any other knowing violation of the FLSA by any employee, regardless of rank, title or position, is misconduct and will result in disciplinary action up to and including termination.

#### **COMMANDING OFFICERS RESPONSIBILITIES**

Commanding officers shall ensure every employee under their command receives a copy of this Notice and that each employee signs the attached "Acknowledgement of Receipt." The receipt shall be placed in the employee's Department personnel folder and a copy placed in their divisional personnel folder. This shall be completed by **July 29, 2005**.

Commanding officers shall ensure that an additional copy of this Notice is served upon and explained to every sworn employee at the rank of Lieutenant and below and civilian employees eligible to receive overtime compensation during service of their next Performance Evaluation Report, and that said discussion be documented in the first paragraph of the narrative evaluation.

#### **BUREAU COMMANDING OFFICERS RESPONSIBILITIES**

Bureau commanding officers shall cause audits to be conducted no later than **August 26, 2005**, to ensure that every employee within the Bureau has received a copy of this Notice and that the Acknowledgement of Receipt for each employee has been placed in the divisional personnel folder and sent to Personnel Records for entry into the Department personnel folder.

Bureau commanding officers shall also cause audits to be conducted during the 12-month period beginning with the date of this Notice to ensure compliance with the Performance Evaluation Report requirement included in the Commanding Officers Responsibilities section of this Notice.

If you have any questions regarding this Notice, please contact the Employee Relations Administrator at (213) 485-6552.



WILLIAM J. BRATTON  
Chief of Police

DISTRIBUTION "D"

Attachment