



OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

Department of Corrections Overtime and Hazardous Pay
Report No. 09-04, July 2009

We found that the Department of Corrections (DOC) continues to incur overtime accumulating to \$150,549 as of May 2009, despite the overtime caps implemented by management. Out of 76 employees, 10 employees incurred \$99,527, or 66% of the total overtime. These 10 employees were also the top DOC overtime earners between FY 2005 and FY 2008.

In addition, DOC paid \$33,346 of hazardous pay between October 1, 2008 and April 25, 2009, to 15 correction officers and guards detailed outside the adult correction facility. We estimated that DOC expended \$231,202 in hazardous pay or an average of \$57,801 annually since 2005, to employees not in a life-threatening environment.

Overtime and Compensatory Time Accrual and Payment Noncompliance

In an effort to control overtime costs, DOC implemented overtime caps by position rank in January 2008. OPA's December 2008 audit report on the *Government of Guam Wide Overtime*, Report No. 08-10, found that DOC's overtime costs were notably higher than both the Guam Police Department and Guam Fire Department, averaging 21% of its total personnel costs over the last six fiscal years between 2003 and 2008.

Since then, DOC's practice was to pay the overtime hours within the established caps in the following pay period. However, we found that unpaid overtime for hours in excess of the overtime caps had accumulated to \$150,549, owed to 76 corrections officers and guards, who collectively earned 5,516 hours of overtime between January and September 2008. DOC subsequently converted excess overtime hours into compensatory time accrued (CTA), which provides paid leave in lieu of overtime pay. Some corrections officers and guards were not content with the conversion and took their concerns to a senator and OPA at whose requests this audit was initiated.

According to local and federal law, compensatory time in lieu of payment must be agreed to or understood as policy **prior** to the performance of overtime work. DOC officials admitted that not all employees had signed CTA agreements. Guam Department of Labor officials advised DOC that the conversion of overtime to leave time was not within Federal Labor Standards Act rules and regulations and that DOC was liable for the \$150,549 in overtime payments. DOC's position is that it needs legislative authorization to make the payment as it is a prior year's obligation.

Inequitable Overtime Distribution

Between October 1, 2008 and May 15, 2009 (7½ months of FY 2009), DOC paid \$896,963 in overtime to 191 employees. Nearly 90% of the amount paid, or \$795,374, was paid to five DOC positions. Although DOC maintains a call-back list to distribute overtime more equitably, the Director informed us that overtime is voluntary and that supervisors have discretion to assign overtime. As such, supervisors approved overtime only to a select few employees, whose total annual incomes far exceeded their base salaries, in addition to exceeding the overtime caps. For instance, a Correction Officer II, whose base salary is \$35,571, was paid \$52,953 in overtime, resulting in total compensation for 2008 of \$88,524.

The following are the top five DOC overtime earners between FY 2005 and 2008 who were paid significantly more than their base salary in FY 2008:

1. Correction Officer II with a base salary of \$35,571 accrued \$52,953 in overtime or 149% of his base salary, resulting in total compensation for FY 2008 of \$88,524.
2. Correction Officer II with a base salary of \$40,819 accrued \$35,689 in overtime or 87% of his base salary, resulting in total compensation for FY 2008 of \$76,508.
3. Correction Officer III with a base salary of \$38,155 accrued \$34,994 in overtime or 92% of his base salary, resulting in total compensation for FY 2008 of \$73,149.
4. Correction Officer I with a base salary of \$28,963 accrued \$40,355 in overtime or 139% more than his base salary, resulting in total compensation for FY 2008 of \$69,318.
5. Correction Officer I with a base salary of \$29,962 accrued \$22,977 in overtime or 77% of his base salary, resulting in total compensation for FY 2008 of \$52,938.

Hazardous Pay Inappropriate

Pursuant to Guam law, government employees who perform guard duty over prisoners are entitled to 10% hazardous pay. DOC details inmates to areas outside the correction facility and grants hazardous pay to the corrections officers and guards who work along side them. In February 2001, the Civil Service Commission instructed DOC to cease hazardous pay for all employees working in the administrative divisions and Director's office because they were not "exposed to a life-threatening environment." Despite instruction, we found that employees in the Director's office continued to receive hazardous pay (see OPA Audit Report No. 02-08, *DOC Payroll and Overtime Practices*, issued in November 2002).

Between October 1, 2008 and April 25, 2009, DOC paid \$33,346 of hazardous pay to 15 correction officers and guards detailed outside the adult correction facility, (i.e., to the Director's Office, Administrative Services Division, and the Parole Services Division). The Director explained that he also detailed an inmate to his Hagatna office and thus the officers working in the administrative divisions were "supervising an inmate" and were entitled to hazardous pay.

In May 2009, the Department of Administration's Human Resources Division concluded that the 10% hazardous pay for corrections officers and guards assigned to the Director's and other administrative offices was inappropriate. DOA determined these employees were not in a life-threatening environment. We estimate that DOC paid \$231,202 in hazardous pay, or an average of \$57,801 a year since 2005, to employees who were not in a life-threatening environment.

Civil Case

During our audit, we noted that an on-going civil suit related to this matter (Civil Case No. CV1273-06) awaits judicial decision. The suit pertains to a DOC Warden suing the former DOC Director for 10% interest in late overtime payments.

Conclusion

While we recognize that overtime within law enforcement is inevitable, it is incumbent upon the Director and his management team to ensure that overtime is scrutinized, equitably distributed, monitored and controlled. We found that this was not the case. Based on the disparities in the overtime distribution, DOC management has not controlled overtime.

DOC's management response submitted on July 16, 2009 stated that management "essentially agrees with the preliminary findings," however, DOC provided comments on the various findings. See Appendix 7 for the management's response.

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