§ 134. Work week of state officers and employees for basic annual salaries; overtime compensation. 1. For all state officers and employees, other than officers and employees of the legislature and the judiciary and other than those who shall be excluded pursuant to the rules and regulations hereafter mentioned, the workweek for basic annual salary shall not be more than forty-hours; and, notwithstanding any inconsistent provisions of law, and subject to the rules and regulations promulgated by the director of the budget, any such state officer and employee who is authorized or required to work more than forty hours in any week in their regular position or title or in a position the title of which is allocated to the same salary grade as their regular position, shall receive overtime compensation for the hours worked in excess of forty in each week at one and one-half times the hourly rate of pay received by such employee in their regular position; provided, however, that an employee not subject to the overtime provisions of the federal "Fair Labor Standards Act of 1938" as amended by the federal "Fair Labor Standards Amendments of 1966", being public law six hundred one of the eighty-ninth congress, as approved September twenty-three, nineteen hundred sixty-six, and all acts amendatory thereof and supplementary thereto, may by written agreement with their proper authority exchange hours of work with other employees doing similar work in the same state institution or other state governmental unit without overtime compensation. Upon the approval of the director of the budget a member of the state police may be considered to have worked, for the purpose of determining overtime compensation pursuant to the provisions of this section, a minimum of four hours each time they are recalled to work overtime after completing their scheduled work period and leaving their scheduled work station or may be considered to have worked a minimum of two hours each time they are scheduled to return and returns to duty to work overtime for the purpose of making an appearance in court after completing their regularly scheduled work period and leaving their regularly scheduled work station. Upon the approval of the director of the budget an employee may be considered to have worked, for the purpose of determining overtime compensation pursuant to the provisions of this section, a minimum of one-half day each time they are recalled to work overtime after completing their scheduled work period and leaving their scheduled work station; provided, however, that,

subject to the terms of an agreement negotiated between the state and an employee organization pursuant to article fourteen of the civil service law, an employee recalled to work may be considered to have worked less than a minimum of one-half day and an employee recalled to work more than once during a period of one-half day commencing with the onset of the initial recall will not be entitled to more than one-half day of overtime credit unless more than one-half day is actually worked. When an employee shall work overtime in a position which has a title which is allocated to a lower salary grade than the salary grade to which the title of their regular position is allocated, they shall receive overtime compensation at one and one-half times the hourly rate of pay of the maximum salary of the grade of the position in which they shall work overtime, or such maximum salary plus the additional increment or increments, if they would be entitled to such additional increment or increments were they then appointed to such position; provided, however, that when such hourly rate exceeds the hourly rate of pay received by them in their regular position, they shall receive one and one-half times the hourly rate of their regular position. When an employee works overtime in a position allocated to a salary grade higher than the salary grade to which their regular position is allocated, they shall receive overtime compensation at one and one-half times the hourly rate of pay of the rate of compensation to which he would be entitled if they were permanently promoted to the position in which such overtime work is performed. Notwithstanding any other provision of law, where an agreement between the state and an employee organization entered into pursuant to article fourteen of this chapter so provides that such officers and employees covered by such agreement shall receive overtime compensation at a rate of two times the hourly rate of pay received by such employee in their regular position for such hours of work that qualify for such payment under the terms of such agreement.

2. Any person employed by the state in any institution under the jurisdiction of the department of mental hygiene, the department of corrections and community supervision, the department of health or the department of social welfare, or in the state barge canal system, or in the New York state school for the blind, Batavia, or in the New York state veterans' rest camp, Mt. McGregor, whose hours of labor are

limited to forty hours per week, or six days per week, by law or administrative regulation, who is not allowed time off by the appointing officer, during any fiscal year commencing on or after April first, nineteen hundred forty-six, for any holiday, pass day or vacation period which he was eligible to receive by law or by administrative regulation, shall, upon the approval of the superintendent or other head of such institution or department and the director of the budget, be entitled to compensation therefor at the hourly rate of pay received by such employee, or shall be allowed an equivalent amount of time off in lieu of such compensation.

3. The amount received as overtime compensation under this section shall be regarded as salary or compensation for any of the purposes of any pension or retirement system in which the employee receiving the same is a member. Overtime compensation shall not be regarded as salary or compensation for the purpose of determining the right to any increase of salary or any salary increment on account of length of service or otherwise. No such overtime compensation shall be construed to constitute a promotion or to increase any compensation which a public employee may receive pursuant to section six of chapter six hundred eight of the laws of nineteen hundred fifty-two.

4. The director of the budget shall promulgate, and may from time to time amend or rescind, rules and regulations for carrying into effect the provisions of this section. Such rules and regulations, among other things, may classify and define positions and employments for the purposes of this section, and otherwise provide appropriate formulas for determining overtime compensation as herein provided and provide that for the purpose of computing overtime compensation pursuant to this section, members of the state police in any title or individual position or positions shall be considered to have worked a minimum of four hours each time they are recalled to work overtime after having completed their scheduled work period and left their scheduled work station or shall be considered to have worked a minimum of two hours each time they are scheduled to return and return to duty to work overtime for the purpose of making an appearance in court in their official capacity after having completed their scheduled work period and left their

scheduled work station; and provide that for the purpose of computing overtime compensation pursuant to this section, employees in any title or individual position or positions shall be considered to have worked a minimum of one-half day each time they are recalled to work overtime after having completed their scheduled work period and left their scheduled work station. Such rules and regulations may exclude any title or individual position or positions, when the nature of the duties performed or the difficulty of maintaining adequate time controls makes it impracticable to apply to such title or individual position or positions the provisions of this section which prescribe a work week for basic salary and provide for overtime compensation.

5. Notwithstanding any other provisions of law to the contrary, employees in any title or individual position or positions ineligible to accrue overtime credits under the rules and regulations promulgated by the director of the budget pursuant to the provisions of this section who are required to work beyond a normal work week may be granted additional compensation. Such compensation shall be paid upon approval by the director of the budget and at a rate established by the director of the budget, provided however, that such additional compensation shall not exceed twelve per cent of the employee's basic salary. Such compensation shall be paid in addition to and shall not be a part of the employee's basic annual salary, and shall not affect or impair any performance advances or other rights or benefits to which the employee may be entitled under the provisions of this chapter, provided however, that any differential payable pursuant to this subdivision shall be included as compensation for retirement purposes.

6. Notwithstanding any other provisions of law to the contrary, any employee in any title or individual position ineligible to accrue overtime credits under the rules and regulations promulgated by the director of the budget pursuant to the provisions of this section who is required to work beyond a normal workweek during a period deemed by the director of the budget to be an extreme emergency, may be granted additional compensation upon the approval of and at a rate established by the director of the budget; provided, however, that such additional compensation shall not exceed one and one-half times the hourly rate of

pay received by such employee in his regular position. Such compensation shall be in addition to, and not be a part of, the employee's basic annual salary and shall not affect or impair any increment or other rights or benefits to which the employee may be entitled under the provisions of this chapter; provided, however, that any differential payable pursuant to this subdivision shall be included as compensation for retirement purposes.

6-a. Notwithstanding any other provisions of law to the contrary, employees in any title or individual position or positions, other than those ineligible to accrue overtime credits under the rules and regulations promulgated by the director of the budget pursuant to the provisions of this section, who are required to be available for immediate recall and who must be prepared to return to duty within a limited period of time may be granted additional compensation for each day that such employee is actually scheduled to remain and remains available for recall; provided, however, in the event an employee entitled to such additional compensation is actually recalled to work, the employee will receive appropriate overtime or recall compensation in lieu of such additional compensation, except that employees in positions in the administrative, operational and institutional services units and the professional, scientific and technical unit established pursuant to article fourteen of this chapter shall receive such appropriate overtime or recall compensation in addition to such additional compensation. Such additional compensation shall be paid upon approval of the director of the budget and at a rate established by the director of the budget. Such compensation shall be paid in addition to and shall not be a part of the employee's basic annual salary, and shall not affect or impair any increments or other rights or benefits to which the employee may be entitled under the provisions of this chapter; provided, however, that any compensation payable pursuant to this subdivision shall be included as compensation for retirement purposes. The director of the budget may adopt such regulations as he or she may deem necessary to carry out the provisions of this subdivision.

6-b. Notwithstanding any other provision of law to the contrary, a member of the state police in a title or individual position, other than

a title or individual position ineligible to accrue overtime credits under the rules and regulations promulgated by the director of the budget pursuant to the provisions of this section, who is either in an off-duty status or has completed a tour of duty and is directed, during an emergency situation, to be available for immediate recall and who must be prepared to return to duty within a limited period of time may be granted additional compensation for each hour of such time that each such member is actually directed to remain and remains available for recall; provided, however, in the event the member is recalled and compensated pursuant to the recall provisions of this section but works less than four hours, for the purpose of computing the compensation payable pursuant to this subdivision the length of time during which the member remains available for recall shall be reduced by an amount of time equal to the difference between the hours worked and four hours. Such additional compensation shall be paid upon approval of the director of the budget and at the rate established, subject to the terms of any agreement negotiated between the state and an employee organization pursuant to article fourteen of the civil service law, by the director of the budget; provided, however, that such rate, when computed on an annual basis, shall not exceed ten per cent of such member's basic annual salary. Such compensation shall be paid in addition to and shall not affect or impair any increments or other rights or benefits to which the member may be entitled under the provisions of this chapter; provided, however, that any compensation payable pursuant to this subdivision shall be included as compensation for retirement purposes. The director of the budget may adopt such regulations as he may deem necessary to carry out the provisions of this subdivision.

6-c. Notwithstanding any other provision of law to the contrary, employees in any title or individual position or positions who are entitled to time off with pay on days observed as holidays by the state as an employer and are required to work on such holidays may be granted additional compensation for time worked on such days. Such additional compensation shall be at a rate established, subject to the terms of any agreement negotiated between the state and an employee organization pursuant to article fourteen of the civil service law, by the director of the budget. Such compensation shall be paid in addition to and shall

not be a part of the employees' basic annual salary, and shall not affect or impair any increments or other rights or benefits to which the employee may be entitled under the provisions of this chapter; provided, however, that any compensation payable pursuant to this subdivision shall be included as compensation for retirement purposes. The director of the budget may adopt such regulations, including eligibility for such pay, as he may deem necessary to carry out the provisions of this subdivision, subject to the terms of any agreement negotiated between the state and an employee organization pursuant to article fourteen of the civil service law.

7. To the extent that appropriations heretofore or hereafter made for personal service in any state department, division, institution or other state agency are sufficient for the purpose, they shall be available for the payment of overtime compensation provided under this section, after audit by and upon the warrant of the state comptroller and the certification prescribed by law for the payment of the regular compensation of such employees.

7. No rule, regulation or other procedure under this section affecting state employees shall be adopted, repealed or amended without the approval of the director of employee relations.