

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



STATE LAW LIBRARY  
AUGUSTA, MAINE

OFFICE OF  
THE GOVERNOR

NO. 15FY 84/85  
DATE June 11, 1985

LIMITATION ON HOURS OF WORK FOR  
NON-STANDARD EMPLOYEES OF STATE GOVERNMENT

WHEREAS, The United States Supreme Court recently reversed an earlier decision and held that the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201, et seq., applies to employees of State and local governments, Garcia v. San Antonio Metropolitan Transit Authority, 105 S.Ct. 1005 (1985), reh'g denied, 105 S.Ct. 2041 (April 15, 1985); and

WHEREAS, due to the Garcia decision, the State is subject to significant, indeterminable and unbudgeted liability for overtime unless certain measures are taken immediately to set limits on the total number of hours which may be worked by State government employees who are designated as non-standard and paid the non-standard premium in lieu of overtime and who are not exempt from coverage under the FLSA; and

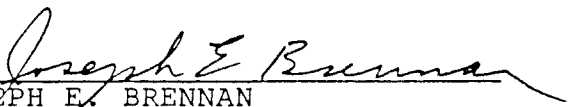
WHEREAS, these facts create an emergency situation with respect to the funding of the operation of State government which, if not addressed, could lead to massive layoffs, major cuts in essential services or both;

NOW, THEREFORE, I JOSEPH E. BRENNAN, Governor of the State of Maine, do hereby issue the following order, effective today:

1. All non-standard employees who are not eligible for exemption from the FLSA, as determined by the Department of Personnel, shall immediately comply with the following procedures to ensure that the total number of hours they work does not incur FLSA overtime liability beyond the State's budgeted, authorized ability to pay.
  - a. All non-standard employees who do not qualify as law enforcement or fire fighting personnel under the FLSA, as determined by the Department of Personnel:
    - 1) will continue to schedule their own hours based on operational needs as determined by the supervisor; but

- 2) are not authorized to schedule or work more than 40 hours in any work week without express advance approval of the Commissioner or his or her designee, except in the event of a bona fide emergency occurring at the end of the workweek.
- b. All non-standard employees who qualify as law enforcement personnel under the FLSA, as determined by the Department of Personnel:
- 1) will continue to schedule their own hours based on operational needs as determined by the supervisor; but
  - 2) are not authorized to schedule or work any more than 171 hours in any of the 28-day work periods established by the employing State Department or Agency; and
  - 3) in order to monitor the accrual of total hours of work within the 28-day work period, are not authorized to schedule or work any more than 43 hours in any workweek; except that
  - 4) with respect to both the 43 and 171 hours limitations, additional hours may be worked within the relevant periods if, and only if, a) there is express advance authorization from the Commissioner or his or her designee or b) there is a bona fide emergency occurring at the end of the relevant work period. If more than 43 hours are worked in any week, the employee and the supervisor shall review the work to be accomplished in the remainder of the 28-day period to ensure that 171 hours will not be exceeded for the full work period.
- c. All non-standard employees who qualify as fire fighting personnel under the FLSA, as determined by the Department of Personnel:
- 1) will continue to schedule their own hours based on operational needs as determined by the supervisor; but
  - 2) are not authorized to schedule or work any more than 212 hours in any of the 28-day work periods established by the employing State Department or Agency; and

- 3) in order to monitor the accrual of total hours of work within the 28-day work period, are not authorized to schedule or work any more than 53 hours in any workweek; except that
  - 4) with respect to both the 53 and 212 hours limitations, additional hours may be worked within the relevant periods if, and only if, a) there is express advance authorization from the Commissioner or his or her designee or b) there is a bona fide emergency occurring at the end of the relevant work period. If more than 53 hours are worked in any week, the employee and the supervisor shall review the work to be accomplished in the remainder of the 28-day period to ensure that 212 hours will not be exceeded for the full work period.
2. All employees, regardless of their inclusion or not in a bargaining unit, who are designated non-standard and paid the non-standard premium in lieu of overtime and who are not eligible for exemption from the FLSA as determined by the Department of Personnel shall continue to be paid their base salary plus the non-standard premium until otherwise ordered or changed by agreement with representative bargaining agents.
  3. Each Commissioner and Agency Head of State Government shall immediately identify the individuals in the Department or Agency who will be designated to approve hours of work pursuant to this Order.
  4. Each Commissioner or Agency Head shall ensure that a definition of "bona fide emergency" is prepared immediately to define that term according to the operational context of the Department or Agency.
  5. All employees affected by this Order shall be informed immediately of: 1) the terms of this Order, 2) the relevant individual(s) designated to approve hours of work pursuant to this Order, and 3) the employing Department's or agency's definition of "bona fide emergency." An employee's failure to comply with the provisions of this Order shall be just cause for counseling and progressive discipline as appropriate.

  
JOSEPH E. BRENNAN  
Governor