Report of the Task Force to Examine Management Policies Regarding the Use of Overtime by State and County Employees

In Accordance with
Senate Resolution No. 97
Senate Draft 2
Regular Session 2012

Prepared by the

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
STATE OF HAWAIʻI

December 2012

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY

Senate Resolution No. 97 Senate Draft 2 requested that the Director of the Department of Human Resources Development (DHRD) establish a Task Force to examine management policies regarding the use of overtime by State and County employees. The Task Force was asked to investigate, discuss and review possible methods to reduce the amount of overtime used by employees in the context of the unfunded liability of the Employees' Retirement System (ERS).

Senate Resolution No. 97 also requested that the Task Force report its findings, recommendations and any proposed legislation to the Legislature no later than twenty days prior to the 2013 regular session.

The DHRD Director convened and chaired the Task Force. Pursuant to Senate Resolution No. 97 Senate Draft 2, members of the Task Force consisted of representatives from the State Senate, State House of Representatives, DHRD, Department of Public Safety (PSD), City and County of Honolulu, Hawai'i County, Kaua'i County, Maui County, Honolulu Police Department (HPD), Honolulu Fire Department, Hawai'i Government Employee Association and United Public Workers.

The Task Force met twice to discuss the issues raised by Senate Resolution No. 97 Senate Draft 2. Section IV of this Report details the Task Force's findings and recommendations.

II. INTRODUCTION AND MEMBERSHIP

As a basis for the resolution, the State Senate found that (1) the amount that employees and their employers are required to contribute to the ERS each year is determined in part by base salaries, while the actual pension payments are based on the three years with the highest overall compensation, which includes overtime, differentials and other supplemental pay; (2) a small number of excessive overtime cases can drive up the costs of the ERS significantly; and (3) overtime is authorized by supervisors, and thus management of employees' time and work attendance is a critical factor in the determination of overtime. Accordingly, the Task Force was requested to examine management policies regarding the use of overtime by State and county employees.

The DHRD Director convened the Task Force. Pursuant to Senate Resolution No. 97 Senate Draft 2, the following were designated as members and alternate members, respectively, of the Task Force:

<u>Hawai'i State Senate</u>
Senator Donna Mercado Kim
Senator Clayton Hee

Hawai'i State House of Representatives
Representative Marcus Oshiro
Representative Karl Rhoads

Department of Human Resources Development
Barbara Krieg, Director
Leila Kagawa, Deputy Director

Department of Public Safety
Ted Sakai, Director
Nolan Espinda, Warden, Hawai'i Correctional Facility

City and County of Honolulu
Robin Chun-Carmichael, Asst. Director, Department of Human Resources
Jennifer Tobin, Human Resource Manager III, Department of Human Resources

Hawai'i County
Sharon Toriano, Deputy Director, Department of Human Resources

Kaua'i County
Janine Rapozo, Department of Personnel Services, Human Resource Manager II

Maui County
Lance Hiromoto, Director, Department of Personnel Services
David Underwood, Deputy Director, Department of Personnel Services

Honolulu Police Department
Captain William Axt, Finance Department
Major Thomas Grossi, Finance Department

Honolulu Fire Department
Roy H. Murakami, Assistant Chief
Jeffrey K. Farris, Assistant Chief

Hawai'i Government Employee Association
Sanford Chun, Field Services Officer

United Public Workers
Dayton Nakanelua, State Director
Clifford "Chip" T. Uwaine, Executive Assistant to the State Director

The Task Force met on September 17, 2012 and October 22, 2012.

III. DISCUSSION

ERS Briefing

The Task Force requested and was provided a briefing by Wesley Machida, ERS Administrator, regarding the relationship of overtime to ERS unfunded liability and the effect of recent legislative enactments on future unfunded liability. Highlights of the ERS presentation were:

Report on ERS' Unfunded Liability: By the end of 2012 the unfunded liability for the ERS will be $8.6 - $8.9 billion.

Impact of Excessive Overtime on ERS' Unfunded Liability: For ERS members employed before July 1, 2012, retirement benefits are calculated based on total compensation earned in the employees' final years of employment, including overtime, differentials, bonuses, etc. The ERS contributions throughout these employees' years of service were set with the expectation of a pension payment based on gradual increases in compensation rather than significant increases in the final years. For employees who work excessive overtime hours in their last years of employment, pension payments are significantly higher than if those employees had continued to work a consistent amount of overtime throughout their careers. For these employees, the contributions received over the employees' careers are insufficient to pay for the actual (increased) pension payments over the duration of their retirement. This has resulted in significant unfunded liability.

Recent Legislation: Act 153, SLH 2012 and Employer Assessments: Effective July 1, 2012, if an employee retires with a "sudden increase" in non-base pay (i.e. overtime) during his/her final years of employment, his/her last employer is required to make an additional payment to the ERS to fund the otherwise unfunded liability. These additional contributions (employer assessments) will be payable in the fiscal year following the fiscal year of the former employee's retirement.

Other Recent Legislation: For employees hired after June 30, 2012, Act 163, SLH 2011 provides for lower benefit multipliers, more years of service to be eligible for benefits, lower post-retirement benefits and increased employee / employer contributions to the ERS. Act 152, SLH 2012 provides that for these new hires, for ERS benefit computation purposes, "compensation" includes only normal periodic payments, shortage differentials and DOE 12-month differentials. For these employees, compensation for ERS purposes will not include overtime, supplemental payments, bonuses, lump sum salary supplements, allowances or differentials.

Other ERS Data: The Task Force was provided a breakdown of overtime as a percentage of total payroll for each jurisdiction. If the current overtime trend continues, approximately 6,000 active employees/members are expected to retire with sufficiently heightened compensation levels, and corresponding increased pension payments, to trigger the employer assessment under Act 153.

Effect of Recent Legislation

The Task Force members agreed that the employer assessments established by Act 153 will have a positive effect on the ERS unfunded liability. To demonstrate the application of the new law, the ERS prepared a report calculating the amounts that would have been assessed against each employer, if the law had applied to actual retirements during the calendar years 2008-2010. (See Appendix Item 1 "Breakdown of Employer Assessments" and "Employer Assessment Example"). During the identified three year period, a total of 674 employees retired, 224 of whom experienced "sudden increases" as defined in the statute. The total amount of employer assessments payable to the ERS for these retirees would have been $13,169,856. In addition to its positive effect on the unfunded liability, the assessments should incentivize employers to actively manage the use of overtime.

The Task Force members also discussed that Acts 152 and 163 combine to significantly control the unfunded liability for employees hired on and after July 1, 2012. Given the Task Force's understanding of the pension rights of current employees, it did not appear fruitful to discuss whether to propose similar legislation applicable to employees hired before July 1, 2012.

24/7 Operations

Based on the ERS reports and discussion among its members, the Task Force identified operations requiring staffing on a continuous basis, 24 hours per day and 7 days per week ("24/7 operations") as the appropriate focus for its review.

Overtime can be incurred by any employee under certain circumstances – namely, with demonstrated need and appropriate authorization. However, for all employers, operations which require staffing on a 24/7 basis are the primary source of overtime. There are a number of possible reasons that overtime can be incurred. These include mandatory staffing levels, potential short-staffing situations, and employees who are unavailable to work as scheduled.[1] Another significant cause of overtime in recent years has been natural disasters (earthquakes, tsunami warnings, fires, etc.). Water main breaks and other infrastructure emergencies likewise have created the need for overtime.

[1] For reference purposes, the Task Force members were provided a chart summarizing the overtime provisions in certain collective bargaining agreements. There was general consensus that any discussion of the contractual overtime provisions should be deferred to the collective bargaining process. The Task Force, as instructed, focused on the management of overtime within the constraints of the existing provisions and laws.

Not surprisingly, the police and fire departments can incur significant overtime costs. Much of the overtime is due to the unpredictable nature of emergencies, which cannot be avoided. There are, however, other overtime occurrences that may be minimized. For example, one cause of HPD overtime is compensation for officers who work outside of the day shift, who have to testify in court during daytime hours (for which they receive overtime). Without the implementation of a night court program, this court time will continue to be a major source of overtime. HPD has been working to minimize the overtime incurred by encouraging prosecutors to keep the testifying officers on a stand-by basis rather than being called in for the full length of the trial. This is one example of active oversight by management to identify and minimize overtime costs.

In addition to police and fire operations, the other 24/7 operations (i.e. correctional facilities, Hawaii State Hospital, etc.) likewise necessarily incur overtime. The respective employers also work within existing personnel constraints to adequately cover operations while minimizing costs, including overtime costs.

Lack of Reliable Data

Notwithstanding the discussions summarized above, the Task Force was challenged by the lack of data from which to effectively examine the actual causes of overtime and the corresponding management policies regarding the use of overtime. There was a general consensus that overtime requires authorization through the appropriate channels. However, the employers generally lack data from which to determine the reasons overtime was incurred in a particular instance; without such data, a valid study of relevant policies is not possible.

With respect to the State employers, the lack of data has been acknowledged and, in part, addressed by the State's FY 2012/13 Budget (HB2012, CD1) new reporting requirements regarding the use of overtime. On an annual basis, each department and agency must identify amounts budgeted and expended on overtime, compensatory time off (CTO), the specific circumstances that required the use of overtime, all positions for which the sum of the value of overtime and CTO exceeds 20 percent of the base salary, comparative data and strategies to reduce overtime use. The data required by the new budget provisions should be a useful tool for State departments and agencies to analyze and address the appropriate use of overtime on a going-forward basis. In addition, the State Executive branch departments including the Department of Education are in the planning stages for a comprehensive technology solution which, when implemented, should significantly improve the ability to identify and manage overtime occurrences.

<u>General Discussion</u>

The Task Force acknowledged and appreciated the recent legislative efforts to address overtime and ERS unfunded liability concerns. The recent legislation does not entirely address these concerns – for example, there are employees whose pension payments will be increased due to overtime worked, although not enough to constitute a "sudden increase" for the purpose of the employers assessment. Nevertheless, the recent legislation diminished the need for the Task Force. The Task Force also noted that through the legislature's efforts (including the formation of this Task Force), employers have been reminded of the need for active management and oversight of overtime worked by their employees.

IV. FINDINGS AND RECOMMENDATIONS

The Task Force made the following findings and recommendations:

1. The new laws related to ERS pensions (summarized above) have made progress toward addressing the unfunded liability. Act 152 removes overtime from the pension calculation for new employees; Act 163 adjusts the pension benefits and contributions for new employees; and Act 153 requires the employers to fund the otherwise unfunded liability for retirees who increase their pension payments by, among other things, working excessive overtime in their final years of employment.

2. The lack of tools to track and monitor overtime usage, including meaningful data on the reason(s) overtime has been incurred, has created challenges. Without such data, the Task Force was limited in its ability to formulate recommendations for management policies to reduce overtime as it relates to the ERS' unfunded liability.

3. The recent legislation should adequately address (from a legislative perspective) the concerns identified for the Task Force's review, and that there is no additional proposed legislation at this time.

4. The recent legislation should also incentivize employers to examine staffing levels, intensify efforts to fill all vacancies and, if needed, request additional positions to ensure adequate resources.

V. APPENDICES

1. Excerpts from the October 22, 2012 ERS Briefing

Employer Assessment Example

Average Number of Employer Assessments Per Year and Average Amount

	General Employee		Police/Fire (includes 25&Out)		Total	
Employing Entity	Average Number of Assessments	Average Assessment	Average Number of Assessments	Average Assessment	Average Number of Assessments	Average Assessment
State of Hawaii	102.0	38,272	5.3	70,283	107.3	39,863
City & County of Honolulu	36.3	70,697	24.3	71,539	60.7	71,035
County of Hawaii	8.0	34,921	13.3	140,678	21.3	101,019
County of Maui	9.0	38,380	8.3	80,569	17.3	58,663
County of Kauai	7.0	70,953	3.7	89,498	10.7	77,328
Board of Water Supply	6.7	92,129	0.0	0	6.7	92,129
Total	169.0	46,911	55.0	90,744	224.0	58,794

Determined as if Employer Assessments under Act 153 had been in effect for calendar years 2008-2010. Based on a total of 674 retirees over the 3 year period.

Breakdown of Employer Assessments

Average Number of Employer Assessments Per Year and Average Amount

	General Employees		Police and Fire		Total	
Entity	**Average Number**	**Average Assessment**	**Average Number**	**Average Assessment**	**Average Number**	**Average Assessment**
State of Hawaii DOA	2.3	35,548	0	0	2.3	35,548
State of Hawaii DBEDT	0.3	35,325	0	0	0.3	35,325
State of Hawaii DLNR	5.3	80,797	0	0	5.3	80,797
State of Hawaii DOT	20.3	30,140	3	66,170	23.3	34,772
State of Hawaii DOE	14	36,977	0	0	14	36,977
State of Hawaii UH	6.7	41,023	0	0	6.7	41,023
State of Hawaii DOD	0.3	122,189	0	0	0.3	122,189
State of Hawaii DOH	25.3	30,960	0	0	25.3	30,960
State of Hawaii HHL	0.3	20,454	0	0	0.3	20,454
State of Hawaii JUD	3.7	56,287	0	0	3.7	56,287
State of Hawaii DHS	5.7	35,579	0	0	5.7	35,579
State of Hawaii DLIR	2.7	32,051	0	0	2.7	32,051
State of Hawaii DAGS	1.3	19,533	0	0	1.3	19,533
State of Hawaii AG Office	1.3	36,219	0.3	99,434	1.7	48,862
State of Hawaii B&F	1.7	40,597	0	0	1.7	40,597
State of Hawaii DCCA	0.7	53,458	0	0	0.7	53,458
State of Hawaii DOTax	1	78,697	0	0	1	78,697
State of Hawaii DPS	9.3	48,144	2	71,593	11.3	52,282
City & County of Honolulu	36	70,697	24.3	71,539	60.3	71,035
County of Hawaii	8	34,921	13.3	140,678	21.3	101,019
County of Maui	9	38,380	8.3	80,569	17.3	58,663
County of Kauai	7	70,953	3.7	89,498	10.7	77,328
Board of Water Supply	6.7	92,129	0	0	6.7	92,129
Total All Employers	**169**	**1,141,058**	**55**	**90,744**	**224**	**58,794**