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July 24, 2009

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Dear Speaker Won Pat:

Hafa Adai! Transmitted herewith is OPA Report No. 09-04, Department of Corrections Overtime and Hazardous Pay. For your convenience, you may also view and download the report in its entirety at www.guamopa.org.

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Department of Corrections Overtime and Hazardous Pay

**Performance Audit
October 1, 2005 through June 6, 2009**

**OPA Report No. 09-04
July 2009**

Distribution:

Governor of Guam
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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.

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the results of our audit of the Department of Corrections (DOC) overtime, compensatory time, and hazardous duty accruals and payments. This audit was initiated at the request of a Senator of the 30th Guam Legislature and in response to citizens' concerns regarding unpaid overtime and hazardous pay. Accordingly, our objectives were to determine between October 1, 2008 and June 6, 2009 whether:

1. DOC had accrued and paid overtime and compensatory time in compliance with applicable laws, regulations, and policies; and whether
2. DOC hazardous pay was paid to eligible employees in accordance with applicable laws, regulation, and policies.

The scope, methodology, and prior audit coverage are detailed in Appendices 2 and 3.

Background

The *Government of Guam Wide Overtime Audit*, OPA Report No. 08-10, issued in December 2008, found that government of Guam expended \$40 million in overtime compensation in the six-year period from FY 2003 through FY 2008. Most of the overtime incurred were by public safety agencies, namely the Guam Police Department (GPD), Guam Fire Department (GFD), and DOC. Overtime accrued in these agencies is substantially higher than other United States (U.S.) cities. Average overtime for the three agencies ranged from 15% to 21% of their total personnel costs, more than double of other U.S. cities. We did not find a comparable overtime benchmark for correction agencies, but found that DOC's overtime costs were notably higher than both GPD and GFD, averaging 21% of its total personnel costs over the last six fiscal years. Overtime for DOC ranged from a low of 9% or \$550,369 in FY 2003 to a high of 27% or \$2.5 million in FY 2006. See Table 1.

Table 1: FY 2003- 2008 Department of Corrections

Fiscal Year	Overtime Pay	Total Personnel Pay	Overtime %
2003	\$ 550,369	\$ 6,452,933	9%
2004	\$ 2,174,976	\$ 8,540,582	25%
2005	\$ 2,298,836	\$ 8,691,462	26%
2006	\$ 2,549,762	\$ 9,569,124	27%
2007	\$ 1,682,577	\$ 9,102,285	18%
2008	\$ 1,546,725	\$ 8,593,680	18%
TOTAL:	\$ 10,803,246	\$ 50,950,066	21%

DOC's overtime expenditures dramatically fell in FY 2003 to \$550,369 upon the release of OPA Audit Report No. 02-08 in November 2002. However, overtime has remained consistently high as illustrated above.

DOC is a government of Guam line agency mandated to protect the public from the destructive action of law offenders through control and rehabilitation. DOC provides staff services for the judiciary, the Parole Board, probation officers, and interested agencies of the Executive Branch. These responsibilities are carried out by more than 200 employees who staff DOC's four divisions: Administration; Prison Security; Diagnostic Treatment Services; and Parole Services. DOC's staff consists primarily of corrections officers and guards.

The policies and regulations governing overtime for DOC are contained in the 4 Guam Code Annotated (G.C.A.), Chapters 4 and 6, DOA Personnel Rules and Regulations, and the Fair Labor Standards Act (FLSA) 29 Code of Federal Regulations (CFR) 500 through 870. Overtime compensation for DOC employees is calculated at time and a half of an employee's regular rate of pay for hours worked in excess of 86 hours per 14-day work period. For use of compensatory time in lieu of payment, local and federal law requires agreement prior to the performance of overtime work. In addition, the FLSA and DOA Personnel Rules and Regulations stipulate that law enforcement employees may not accrue more than 480 hours of compensatory time. Time in excess of 480 hours is to be compensated no later than the pay period following the overtime worked.

Results of Audit

We found that the 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 same 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 estimate 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 rank in January 2008. DOC's maximum bi-weekly overtime caps per position rank, is as follows:

Table 2: Overtime Caps By Position Rank

Rank	Maximum Overtime Bi-weekly Hours
Lieutenant	18
Sergeant	24
Corporal	28
Correction Officer II	32
Armed Security Guard	32
Correction Officer I	48
Security Guard	48

Since January 2008, overtime within the established caps were to be paid in the following pay period, as required by DOA Personnel Rules and Regulations. However, we found that this was not always the case. As of May 15, 2009, DOC owed \$150,549 to 76 corrections officers and guards who exceeded the caps for their respective ranks and collectively earned 5,516 hours of overtime between January and September 2008.

DOC subsequently converted excess overtime hours into compensatory time accrued (CTA). CTA provides leave time instead of wages. The employees who accrued hours in excess of the caps for their ranks were not content with the conversion. Accordingly, corrections officers and guards who were not going to get their overtime pay approached a senator with their concerns. The senator, in turn, requested the Public Auditor to look into the matter.

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 of the department's employees signed its "compensatory time employee waiver agreement," which contained a provision relieving DOC of having to pay overtime hours in excess of the overtime caps. Guam Department of Labor official advised DOC that the conversion of overtime to leave time was not within the rules and regulations and that DOC was liable for the \$150,549 in overtime payments. DOC stated 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, DOC paid \$896,962 in overtime to 191 employees. Five DOC positions incurred \$789,000, or 90% of the total overtime alone. Although DOC maintains a call-back list so that overtime could be distributed more equitably, the Director informed us that overtime is voluntary and that supervisors have the discretion to assign personnel for overtime. As such, supervisors continue to approve overtime for only a select few, resulting in overtime caps exceeded by those selected.

The following are the five DOC personnel who made significantly more than their base salary ranging from 77% to 149%, in FY 2008:

1. Correction Officer II with a base salary of \$35,571 made \$52,953 in overtime, 149% of his base salary. His income totaled \$88,524.
2. Correction Officer II with a base salary of \$40,819 made \$35,689 in overtime, 87% of his base salary. His total income was \$76,508.
3. Correction Officer III with a base salary of \$38,155 made \$34,994 in overtime, 92% of his base salary. His total income was \$73,149.
4. Correction Officer I with a base salary of \$28,963 made \$40,355 in overtime, 139% of his base salary, bringing his income to \$69,318.
5. Correction Officer I with a base salary of \$29,962 made \$22,977 in overtime, 77% of his base salary. His total income was \$52,938.

Hazardous Pay Inappropriate

In February 2001, in its audit investigation, the Civil Service Commission (CSC) instructed DOC to cease paying hazardous pay for all hours that an employee reports for duty within the office of the Director and administrative division because they were not exposed to a life-threatening environment. Despite the CSC report, we found that detailed employees in the Director's office were still receiving the 10% hazardous pay (see OPA Report No. 02-08, *DOC's Payroll and Overtime Practices*, issued in November 2002). DOC detailed an inmate to the Director's office in order to justify the "*life threatening environment*" requirement for employees to receive hazardous pay. The Director maintained that his detailing of an inmate to his Hagatna office qualified as "supervising an inmate."

DOC paid \$33,346 to 15 corrections officers and guards who were detailed to the administrative divisions from October 1, 2008 to April 25, 2009. In May 2009, DOA's Human Resource Division concluded that the 10% hazardous pay for corrections officers and guards detailed to the Director's and other administrative offices was inappropriate because they were not being exposed to a life-threatening environment.

We estimate that DOC paid at least \$231,202 in hazardous pay, or an average of \$57,801 per year since 2005, for those employees who were not in a life-threatening environment.

Overtime and Compensatory Time Accrual and Payment Noncompliance

As required by DOA Personnel Rules and Regulations, all overtime accrued is supposed to be paid no later than the pay period following the performance of the overtime work. However, we found that overtime in excess of the established caps by DOC was not paid and had accumulated to \$150,549 as of May 2009, owed to 76 corrections officers and guards.

Subsequent Conversion of Excess Overtime Hours to Compensatory Time Accrued

In DOC's effort to curtail excess overtime, DOC converted the excess overtime hours into compensatory time accrued. See appendix 4 for memo on overtime caps. Federal law and government of Guam rules and regulations regulate the use of CTA in lieu of overtime pay. The FLSA, 29 CFR §553.23, requires compensatory time in lieu of pay to be agreed to or understood as policy **prior** to the performance of overtime work. DOC developed a "compensatory time employee waiver agreement" in FY 2008, but DOC officials admitted that not all of the department's employees signed the agreement. See appendix 5 for a sample agreement. DOC's fiscal manager also noted that the agreement contained an unenforceable statement that DOC would not be obligated to pay overtime in excess of the caps.

The conversion of excess overtime hours to CTA was not well received by DOC employees, and resulted in some of these employees expressing their discontent to OPA and a senator.

The administrator of Guam Department of Labor's Wage and Hour Division advised DOC that the conversion was contrary to the FLSA and was not within the rules and regulations. He also advised that DOC did not have the discretion to withhold payment from employees and was still liable for overtime payments.

Between January and September 2008, 76 DOC corrections officers and guards accrued 5,516 hours of overtime in excess of the caps for their ranks. Collectively, they are owed \$150,549. Of the 76 employees, 10 are owed \$99,527, or 66% of the total for 3,617 hours of overtime. DOC's fiscal manager offered that these employees remain confident that the department will find the money to pay them.

Table 3: Top 10 DOC Overtime Earners In Excess of the Overtime Cap

Employee Rank	Position	Hours in Excess of Overtime Cap	Regular Hourly Rate	OT Amount	%
1	Correction Officer II	840.00	\$ 17.10	\$ 21,546.00	14.31%
2	Armed Security Guard	474.00	\$ 19.07	\$ 13,558.77	9.01%
3	Correction Officer III	330.00	\$ 22.37	\$ 11,073.15	7.36%
4	Correction Officer II	321.50	\$ 21.59	\$ 10,411.78	6.92%
5	Correction Officer III	314.00	\$ 20.18	\$ 9,504.78	6.31%
6	Correction Officer I	397.50	\$ 15.32	\$ 9,134.55	6.07%
7	Detention Facility Guard	312.00	\$ 16.97	\$ 7,941.96	5.28%
8	Correction Officer I	298.00	\$ 13.73	\$ 6,137.31	4.08%
9	Correction Officer Supervisor I	168.00	\$ 22.44	\$ 5,654.88	3.76%
10	Correction Officer III	161.50	\$ 18.84	\$ 4,563.99	3.03%
	Top 10 Total:	3,616.50		\$ 99,527.17	66.11%
	Overall Total:	5,516.00		\$150,548.64	100.00%

The Director informed us that overtime accrued within the caps is paid on time and with regular pay, but hours in excess of the caps are held for secondary review to ensure they are valid and justified. Both the Director and Fiscal Manager acknowledged that DOC was following its internal policies and procedures when they converted the excess overtime hours into CTA. However, DOC's policies were not consistent with FLSA. As a result, DOC has submitted a request to the Legislature to pay the \$150,549 of accrued overtime. The payment is dependent upon the legislature's approval as it is a prior year's obligation.

CTA Hours in Excess of Authorized Cap

FLSA and DOA Personnel Rules and Regulations prohibit requiring law enforcement from accruing more than 480 hours of compensatory time. However, we identified a Correction Officer II who accrued 840 hours of CTA (Table 3, Employee Rank #1). In addition to the 86 regular hours worked, this particular employee averaged 64 hours¹ of overtime every pay period.

DOC amended its CTA employee agreement waiver in November 2008 (see Appendix 5) to be consistent with FLSA law. Then in FY 2009, DOC re-implemented its CTA program using the revised employee waiver agreement. Between October 1, 2008 and June 6, 2009, 52 corrections officers and guards accrued 1,473 hours of CTA, saving the department \$42,349 in overtime costs.² The top five earners in excess of the overtime caps in FY 2008 (Table 2) are the same individuals who accrued the top five CTA hours in FY 2009.

Inequitable Overtime Distribution

The Director confirmed that DOC employees' acceptance of overtime work is voluntary. DOC maintains a call-back list to equitably distribute overtime, but supervisors have the discretion to call or assign the overtime. From October 1, 2008 through May 15, 2009, DOC paid \$896,963 in overtime to 191 employees. Five DOC positions in the department comprised nearly 90%, or \$795,374 of earned overtime paid during the year. For the purpose of this audit, we analyzed those positions that had more than one staff earn overtime in excess of the threshold. We found that overtime distribution among like positions was not distributed equitably; for example:

- Correction Officer I. Of the 112 who accrued overtime pay ranging from as low as \$143 to as high as \$15,200, only 18, or 16%, were paid more than the \$7,600 midpoint; 94 were paid less than \$7,600.
- Correction Officer II. Of the 24 who accrued overtime pay ranging from as low as \$363 to as high as \$12,436, only 10, or 42% were paid more than the \$6,218 midpoint and 14 were paid less.

Top 10 DOC Overtime Earners

The authority to enforce the January 2008 overtime caps is held by supervising officers. Despite the overtime caps, supervisors continued to approve overtime to a select few employees that were allowed to exceed overtime caps. We noted that total compensation of the top 10 overtime earners between FY 2005 and FY 2008 ranged from a low of \$90,908 to a high of \$154,549.

¹ Comprised of 32 hours overtime cap threshold for Correction Officer II, and an additional 32 hours [840 hours in excess of the cap / 26 pay periods].

² The overtime cost savings will be offset with the amount of CTA hours accrued, which is based on a rate of 1.5 hours earned for each actual overtime hour worked.

Table 4 below demonstrates that DOC employees that ranked # 1, 2, 3, 4, 6, and 7 were also in the top 10 overtime earners in excess of the overtime cap (Table 3). We also found that the Correction Officer II, ranked #1, was the top overtime earner for three of the four fiscal years, earning \$154,549 in overtime.

Table 4: Top 10 DOC Overtime Earners between FY 2005 ~ 2008

Rank	Position	2005	2006	2007	2008	TOTAL:
1	Correction Officer II	\$44,458	\$48,924	\$29,761	\$31,407	\$154,549
2	Correction Officer II	\$28,741	\$46,937	\$34,313	\$25,277	\$135,267
3	Correction Officer III	\$29,566	\$46,200	\$30,793	\$25,489	\$132,049
4	Correction Officer I	\$23,256	\$37,500	\$23,254	\$31,220	\$115,230
5	Correction Officer I	\$22,546	\$27,714	\$36,687	\$22,228	\$109,175
6	Detention Facility Guard	\$16,261	\$34,700	\$34,246	\$22,386	\$107,594
7	Correction Officer III	\$8,158	\$36,402	\$34,635	\$25,631	\$104,827
8	Correction Officer III	\$33,724	\$17,573	\$20,096	\$25,937	\$97,330
9	Administrative Assistant	\$20,980	\$24,559	\$22,787	\$25,232	\$93,557
10	Correction Officer I	\$18,164	\$32,499	\$19,197	\$21,048	\$90,908
Top 10 Total:		\$245,853	\$353,009	\$285,769	\$255,856	\$1,140,486
Overall Total:		\$2,298,838	\$2,549,762	\$1,682,577	\$1,546,725	\$8,077,902
Overall Overtime % to Top 10		11%	14%	17%	17%	14%

Overtime Percent of Base Salary As Much As 149%

We also noted that the inequitable distribution of overtime among select few employees allowed the top 10 DOC overtime earners to earn significantly more than their base salary in FY 2008. For instance, the # 1 overtime earner (Correction Officer II) with a base salary of \$35,571 accrued \$52,953 in overtime or 149% of his base salary. As a result, his total compensation for FY 2008 totaled \$88,524. Top earner # 4, Correction Officer I, with a base salary of \$28,963 earned \$40,355 in overtime or 139% of his base salary, resulting in total compensation for FY 2008 of \$69,318. See Table 5 below for illustration.

Table 5: FY 2008 DOC Base Salary and Overtime Pay Comparison

Rank	Position	Overtime	Base Salary	Total Pay	Overtime % of Base Salary
1	Correction Officer II	\$52,953	\$35,571	\$88,524	149%
2	Correction Officer II	\$35,689	\$40,819	\$76,508	87%
3	Correction Officer III	\$34,994	\$38,155	\$73,149	92%
4	Correction Officer I	\$40,355	\$28,963	\$69,318	139%
5	Correction Officer I	\$22,977	\$29,962	\$52,938	77%
6	Detention Facility Guard	\$30,328	\$31,011	\$61,339	98%
7	Correction Officer III	\$36,704	\$40,873	\$77,577	90%
8	Correction Officer III	\$29,633	\$38,155	\$67,788	78%
9	Administrative Assistant	\$25,231	\$32,119	\$57,350	79%
10	Correction Officer I	\$22,973	\$29,962	\$52,935	77%

Based on the disparities in the overtime distribution, DOC management has not controlled overtime. Monitoring of individual overtime is necessary to ensure that overtime use is justified, controlled, and equitably distributed. DOC work schedulers should review individual overtime work schedules prior to making assignments to ensure that overtime is equitably distributed. Other public safety audit reports recommend agencies analyze their core operations and determine the best use of limited resources.³ By doing so, overtime can be curtailed and the opportunities for employees to earn overtime can be planned and equitably distributed.

It is incumbent upon the Director and his management team to ensure that overtime is scrutinized, equitably distributed, monitored, and controlled. While we recognize that overtime is inevitable due to the nature of DOC's responsibilities, overtime should be monitored, constantly manifested, and evaluated to encourage equitable distribution.

Hazardous Pay Inappropriate

Pursuant to 4 G.C.A. § 6222(a), a correction officer or an employee of the government of Guam who performs the duty of guarding prisoners is entitled to hazardous pay, calculated at the rate of 10% of his or her regular wage for all periods on such duty.

We estimated that DOC expended \$231,202 in hazardous pay, or an average of \$57,801 annually⁴ since 2005, to employees not in a life-threatening environment.



Image 1: DOC Main Adult Correctional Facility in Chalan Pago, which consists of 14 housing units.

Hazardous Pay to Detailed Correction Officers and Guards

We received a hotline tip alleging that corrections officers detailed to DOC's Administrative Division were receiving hazardous pay even though they had no direct contact with inmates or parolees. We found that 15 correction officers and guards who had been detailed to the Director's Office, Administrative Services Division, and the Parole Services Division between October 1, 2008 and April 25, 2009 did indeed receive hazardous pay of \$33,346. See Table 6 below for details.

The Director explained that he detailed an inmate to his Hagatna office in order to justify the "supervising of an inmate" requirement so that detailed corrections officers and guards at the administrative offices could receive the 10% hazardous pay.

³ Clark County Audit of Overtime Hours, Nevada.

⁴ Based on the figures provided by DOC's Administrative Assistant, the 10% hazardous pay for 15 employees assigned to DOC administrative offices totaled \$33,346 for 15 pay periods, beginning October 2008 through April 2009. Using this figure, we calculated the average to be \$2,223 and estimated that it cost DOC approximately \$57,801 per year (\$2,223x 26 pay periods). Hence, DOC approximately paid a total of \$231,202 for the past four fiscal years (\$57,801x 4 fiscal years [FY 2005 ~ FY 2008]).

Table 6: Hazardous Pay Made to Detailed Officers in Administration Divisions

	Position	Detailed Section	Hazardous Pay
1	Chief Parole Officer	Department of Mental Health	\$ 3,987
2	Correction Facility Asst. Superintendent	Parole Services Division	\$ 3,173
3	Correction Supervisor Officer II	Internal Affairs Unit	\$3,100
4	Parole Office I	Government House	\$ 3,055
5	Correction Facility Asst. Superintendent	Director's Office	\$ 2,894
6	Correction Officer II	US Marshals / IAU	\$ 2,555
7	Parole Office I	Parole Services Division	\$ 2,224
8	Detention Facility Guard Leader	Internal Affairs Unit	\$ 2,216
9	Security Guard (Armed)	Director's Office	\$ 2,026
10	Correction Officer I	Internal Affairs Unit	\$ 1,882
11	Parole Office I	Parole Services Division	\$ 1,662
12	Parole Office I	Parole Services Division	\$ 1,646
13	Parole Office I	Parole Services Division	\$ 1,234
14	Parole Office I	Parole Services Division	\$ 956
15	Correction Officer I	Parole Services Division	\$ 737
		TOTAL:	\$ 33,346

CSC Hazardous Pay Investigation in 2001

In February 2001, the Civil Service Commission (CSC) issued its post audit investigation report relative to DOC's hazardous pay practices (CSC No. 2001-170). CSC instructed DOC to cease the hazardous pay for all employees reporting to duty at the Director's office and Administrative Services Division. CSC's memo stressed that the 10% hazardous was applicable only during "exposure to a life-threatening environment with respect to the incarceration of prisoners or only during time of actual exposure, not based on the employee's duty schedule." See appendix 7 for the CSC memo.

OPA Investigative Audit in 2002

Despite the CSC's directive, DOC continued the hazardous pay to employees reporting to duty in administrative divisions. OPA's audit of *DOC's Payroll and Overtime Practices*, Report No. 02-08, issued in November 2002, revealed that inmates were being detailed to the Director's office in order to meet the "life threatening environment" requirement for the detailed staff to receive the 10% hazardous pay.

Department of Administration Ceased Hazardous Pay in 2009

In May 2009, the DOA's Human Resources Division clarified the authorization of hazardous pay for corrections officers assigned to DOC's administrative office in Hagatna.⁵ The memo stressed the basis for hazardous pay as "the guarding of prisoners or when an employee is exposed to a life-threatening environment with respect to incarceration." Since the Director's and administrative offices were located in Hagatna, not in the incarceration compound in Mangilao, the downtown sites were not considered life-threatening environments and thus the 10% hazardous pay for the administrative staff was "inappropriate."

⁵ Memo # HRD No. OG-09-0539.

Civil Case No. CV1273-06

An on-going Civil Case No. CV1273-06, relative to this matter rests in Superior Court where a DOC Warden is suing the former DOC Director for 10% interest on late overtime payments. Specifically, 4 G.C.A. § 6221 stipulates that any overtime not paid within 15 working days after a request for payment is submitted shall earn interest at the rate of 10% per annum from the date due until the date paid the employee at the same time he receives his payment for overtime. No decision has been rendered by Superior Court, as of the issuance of this audit report.

Conclusion

As of May 2009, DOC owed 76 employees \$150,549 in overtime payments incurred in FY 2008. Out of the 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. Although DOC attempted to control overtime costs by placing overtime caps on the number of hours officers and guards could earn, and by subsequently converting hours in excess of the caps into compensatory time, these efforts were ineffective. The caps were often disregarded and CTA was inappropriately implemented.

Overtime at DOC is voluntary and the department maintains a call-back list, but supervisors have discretion to call or assign overtime. Between October 1, 2008 and May 15, 2009, DOC paid \$896,962 in overtime to 191 employees. Of these, five employees earned nearly 90%, or \$789,000, of the total. We found that overtime continues to be distributed inequitably. Additionally, DOC's conversion of excess overtime hours into compensatory time was not done in accordance with federal law or local rules and regulations. Thus, the \$150,549 in overtime payments accrued in FY 2008 will have to be paid. The Director noted that payment is dependent upon legislative authorization as it is a prior year's obligation.

Despite the caps on overtime, DOC supervisors allowed hours to exceed the caps and continued to approve overtime only to select employees who earned significantly more than their base salaries. We learned that a Correction Officer II with a base salary of \$35,571 earned \$52,953 in overtime or 149% of his base salary. His income for FY 2008 totaled \$88,524. The inequitable distribution of overtime to a select few employees was previously noted in OPA's *Government of Guam Wide Overtime* audit report issued in December 2008, Report No. 08-10.

Based on the disparities in the overtime distribution, DOC management has not controlled overtime. Other public safety audit reports recommend agencies analyze their core operations and determine the best use of limited resources. By doing so, overtime can be curtailed and opportunities for employees to earn overtime can be planned and equal distribution can be facilitated.

We found that 15 corrections officers and guards who were detailed to DOC's administrative offices between October 1, 2008 and April 25, 2009 inappropriately received 10% hazardous pay amounting to \$33,346. In May 2009, the DOA's Human Resource Division determined that DOC's administrative offices in Hagatna were not considered life-threatening environments and thus the staff was not entitled to hazardous pay.

It is incumbent upon the Director and his management team to ensure that overtime is scrutinized, equitably distributed, monitored and controlled. While we recognize that overtime is inevitable due to the nature of DOC's responsibilities, overtime should be monitored, constantly manifested, and evaluated to encourage equitable distribution.

Management Response and OPA Reply

A preliminary draft report was transmitted to the DOC Director on July 09, 2009. We met with DOC officials on July 14, 2009 to discuss the preliminary draft. On July 16, 2009, The DOC Director submitted DOC's management response indicating that DOC essentially agreed with the preliminary findings of the audit.

Summary of Responses to Various Findings

Owed Overtime: The response noted the overtime cap was implemented in January 2008 to address and control overtime as recommended in OPA report no. 02-08, issued November 2002. DOC noted that unpaid overtime is overtime owed to personnel who resisted the cap and had the attitude that management would find the money to eventually pay. DOC further stated, "we do not admit that we erred" in the implementation of the cap; however they acknowledge that their provisions and directives were inconsistent with Federal Standard Labor Act provisions.

Inequitable Overtime Distribution: DOC responded that the overtime cap was a management tool intended to create an equitable distribution of overtime among personnel at DOC. The cap was to ensure that personnel who were actually doing the work were afforded the opportunity to volunteer for the hours as opposed to the past practice of many ranking officers and supervisors earning more money than subordinate personnel. DOC states that some employees are more willing to work than others who have the same opportunities, and commented that supervisors have the decision to bring in someone willing to work as opposed to others who do not want to be there. DOC acknowledges that OPA audits have proven that the same people are consistently at the top of the overtime compensation schedules.

Inappropriate 10% Hazardous Pay: DOC responded that officers detailed to the Director's office received the same compensation that officers prior to them were receiving. DOC noted the officers assigned to the Director's office and Parole Services Division are housed in Hagatna, with the same amount of exposure to inmates and parolees. Their assignments do not relieve them of the responsibility to respond to emergencies or assist in day to day mission objectives. In May 2009, DOA and the CSC found those employees in the Director's Office and the Administrative & Parole Services Divisions were not eligible for the 10% hazardous pay.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of the implementation of the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, our office will be contacting DOC to establish target dates and titles of officials responsible for implementing the recommendations. We appreciate the cooperation and assistance shown by the Director of DOC, and the Director's Office personnel during this audit.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:

Classification of Monetary Amounts

	Questioned Costs
Unpaid Overtime in Excess of Cap	\$ 150,549
Inappropriate Hazardous Pay	\$231,202
Total	<u><u>\$ 381,751</u></u>

Appendix 2:**Scope and Methodology**

The objectives of our audit engagement were to gather and evaluate evidence to conclude with reasonable assurance as to whether:

1. DOC had accrued and paid overtime and compensatory time in compliance with applicable laws, regulations, and policies; and whether
2. DOC hazardous pay was paid to eligible employees in accordance with applicable laws, regulation, and policies.

The audit scope included the review of applicable DOC overtime, compensatory time-off, and hazardous pay laws, regulations, policies, prior audit findings, and other relevant documents between October 1, 2008 and June 6, 2009. The audit focused on the appropriateness of DOC's overtime payments, distribution, and hazardous pay. The audit was initiated in response to a concerns raised by a senator from the 30th Guam Legislature and DOC employees. We relied on the overtime and compensatory time records provided by DOC and the audit did not include the verification of the legitimacy of the overtime and compensatory time hours as recorded by DOC. To accomplish our objective, we performed the following:

- Interviewed the senator's staff, who provided the unpaid overtime information. We reviewed documents for the unpaid overtime at DOC and DOA's AS400 system.
- Interviewed the DOC director as to the reason for the accumulation of the unpaid overtime.
- Gained an understanding of the policies, procedures, applicable laws and regulations pertaining to DOC overtime, compensatory time accrued, and hazardous pay, by review of:
 - Guam Code Annotated
 - Fair Labor Standards Act
 - Department of Administration Personnel Rules and Regulations
 - Accounting Supervisor, Chief Payroll Officer, and the DOC Payroll Officer.
- Interviewed DOC's Fiscal and Administrative Manager, Payroll Technician, and an administrative assistant; and DOA's Accounting Supervisor and Chief Payroll Officer.
- Compared paid and unpaid overtime accrued, compensatory time accrued, and hazardous duty paid to the applicable laws and regulations to identify potential noncompliance.
- Analyzed overtime expenditures to determine overtime distribution among like positions.

During our review, we used DOC's compensatory time figures and the AS400 system's overtime labor cost for our analyses. We did not evaluate or verify how DOC arrived at the maximum hours cap by rank.

We conducted this performance audit in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan our audit objectives and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 3:**Prior Audit Coverage**

Government of Guam Financial Audits

The FY 2004 government of Guam Audited Basic Financial Statements Management Letter reported that eight of 25 high-valued overtime amounts were from DOC for hours worked between FY 2001 and 2003. The overtime hours claimed ranged from 80 to 131.5 hours per pay period and the report indicated that these were excessive.

Office of the Public Accountability**Government of Guam Wide Overtime Performance
Audit Report No. 08-10, December 2008**

The government of Guam General Fund expended \$40 million (M) in overtime compensation in the six-year period from October 1, 2002 to September 30, 2008. Most of the overtime was incurred by the Guam Police Department (GPD), Guam Fire Department (GFD), and Department of Corrections (DOC). The overtime accrued in these agencies is substantially higher than other U.S. cities. The average overtime for the three agencies ranged from 15% to 21% of their total personnel costs, more than double other U.S. cities. The audit also found that overtime among like positions in these agencies was inequitably distributed and overtime payments were made up to five months late.

DOC's overtime costs were notably higher than either GPD or GFD, averaging 21% of its total personnel costs over the last six fiscal years. Overtime ranged from a low of 9% in FY 2003 to a high of 27% in FY 2006. In addition, distribution of overtime hours was inequitably allocated to a select few employees, allowing them to earn significantly more than their base salary. For instance, nine DOC employees earned between 70% and 108% of their base salaries. The variance among the salaries of Correction Officers I, II, and III ranged from as low as \$148 to as high as \$31,407. In addition, justification for overtime appeared with little narrative and cited "awaiting relief" as the most common reason for the overtime.

**Department of Corrections Overtime Payroll and Practices
Audit Report No. 03-03 issued in May 2003**

The audit found that DOC employees were receiving two to three times the amount of their base annual salary. For example, a Corrections Supervisor III with a base salary of \$33,259 was paid \$102.54 in 2002 and \$75,729 in 2001. A Security Guard with a base salary of \$31,408 was paid \$81,636 in 2002, \$96,306 in 2001, and \$90,407 in 2000. DOC employees consistently incur overtime in excess of the regularly scheduled 12 hours per day. We found little evidence that management took any steps to control overtime costs.

Appendix 3:**Prior Audit Coverage**

Audit Report No. 03-03 (continued)

Overtime hours of 153,856 were charged in FY 2001 and 88,323 hours were charged for the nine months ending June 30, 2002. DOC contends that overtime hours were mandated by Executive Orders 96-35 and 2000-06. The Facility Superintendent believed that the executive orders relieved them of responsibility for controlling or justifying overtime. OPA also found that the Acting Director approved the overtime requests of his stepson.

Although many people were in a position to know that overtime abuses were taking place at DOC, OPA found little evidence that anyone questioned the authority of the Facility Superintendent, certain supervisors, and other personnel to incur excessive overtime.

**Department of Corrections Interim report on Overtime and Payroll Practices
Audit Report No. 02-08, November 2002**

In response to a series of allegations made through the OPA Hotline, OPA conducted an investigative audit into DOC's payroll and overtime practices in June 2002. The audit scope was the 21-month period from October 1, 2000 through June 30, 2002. The interim report identified discrepancies between the hours reported on employee timesheets and the hours documented in the Central Control Blotters (CCB) and several instances of possible collusion, fraud, and abuse. For instance, CCB indicated that employees had called to say that they would not be in to work, but their time sheets showed that they were paid for those absences.

DOC defers overtime payment to employees until funds are appropriated or transferred. In FY 2001, DOC was budgeted \$1,092,818 for overtime, yet actual overtime incurred exceeded \$3 million. As of June 30, 2002, approximately \$1,036,566 in overtime had yet to be paid to DOC employees.

COPY



DEPARTMENT OF CORRECTIONS

Depattamenton Mangngurihi

P.O. Box 3236

Hagatna, Guam 96932



Felix P. Camacho
Governor

Jose B. Palacios
Acting Director

Michael W. Cruz, M.D.
Lt. Governor

January 2, 2008

MEMORANDUM

To: All Personnel
Platoon Commanders
Detention Commander
Unit Managers

Attn: Division Heads
Facilities Commander

Via: Director of Corrections

From: Administrative and Fiscal Affairs Officer

Subject: Overtime Cap
Ref: DOA Rules and Regulations, OPA report, BBMR
recommendations.

It has been brought to our attention that the continual and complete disregard of the approved overtime plan may seriously affect the department's ability to maintain sufficient supplies, contractual services, as well as the appropriate service levels. Pursuant to budget concerns and in an effort to better manage our budget and resources, effective immediately the attached Overtime Cap shall be implemented.

CAPT. JESSIE Q. TUPAZ

Attachments:



Tel. No.: 473-7022, 7023, 7025, 7026
Fax No.: 473-7024

Pursuant to recommendations and in effort to better manage our budget and resources. Effective immediately, the following Overtime Cap shall be implemented. These are the authorized maximum hrs. allowed bi-weekly for the respective ranks as indicated

<u>RANK</u>	<u>MAXIMUM OVERTIME ALLOWED</u>
1. Lieutenant	18 hrs. bi-weekly
2. Sergeant	24 hrs. bi-weekly
3. Corporal	28 hrs. bi weekly
4. Correction Officer II	32 hrs. bi weekly
5. Armed Security Guards	32 hrs. bi weekly
6. Correction Officer I	48 hrs. bi weekly
7. Security Guard	48 hrs. bi weekly

The following are Justifications for the approval of Overtime for uniformed and essential personnel:

- A. Overtime shall be justified pursuant to MINIMUM MANNING REQUIREMENTS as set forth in Department of Corrections **General orders 07-002 and 07-003.**
- B. Custody staff assigned duties in Support of ACF, HDF, and C-3 Operations.
- C. Special Projects such as community work details approved by the Director of Corrections.
- D. Overtime shall be justified due to major institutional emergencies such as escape, riots, and other natural disasters.
- E. Overtime that has prior approval from the Director of Corrections.
- F. Overtime that is incurred due to assignments in support of DOC's mandate to ensure and protect public safety.

Pursuant to DOA PERSONNEL RULES and REGULATIONS, Chapter 07, Section 7.600, UNAUTHORIZED WORK....hours worked by an employee without the appointing authority's permission or, not authorized by such applicable budget appropriations shall not be considered as hours worked.

NO EMPLOYEE shall be compensated for **exceeding 16 hours** of work per day **unless** a bonafide emergency exists. Platoon Commanders must be extremely diligent in enforcing this existing predicament.

Supervisors and employees failing to comply with these instructions are subject to possible adverse actions and/or non-payment of unauthorized work hours.

Overtime incurred over the authorized Maximum is subject to NON-Payment and/or reimbursement.

CAPT. JESSIE Q. TUPAZ

Approved

Jose B. Palacios, Acting Director

Date: _____

Appendix 5:

CTA Employee Waiver Agreement



Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lt. Governor

DEPARTMENT OF CORRECTIONS

Depattamenton Mangngurihi
P.O. Box 3236
Hagatna, Guam 96932



Jose B. Palacios
Director

V H 3.2

EMPLOYEE AGREEMENT

I, _____ hereby agree to compensatory time (CTA) in the event that I am requested to work in excess of authorized overtime hours of _____ biweekly. In lieu of overtime, I will accrue compensatory time at a rate of one and one-half (1½) times for every hour worked in excess of the authorized overtime cap.

I understand that, in order to earn compensatory time, I have to be physically present on the job for 43 or more hours a week. If I take leave during the week, or if a holiday falls in the week or any other administrative absences, that I will still be required to complete the 43 hours before I can accrue compensatory time at a rate of 1½. All accrued compensatory time must be recorded on my official service card with the Payroll Branch before I can be entitled to compensatory time off.

I understand that I shall be permitted to use the time off within a reasonable period after making the request, if it does not unduly disrupt the operations, and that my supervisor will realistically approve my request in good faith. It is also my understanding that management has the right to impose compensatory time off for me.

I have made the above decision to accept compensatory time freely and without coercion or pressure from anyone. I have made this decision to accept compensatory time off and that I shall retain the right to refuse to work beyond the authorized overtime cap a workweek on compensatory time off without harassment and intimidation from my superiors.

Employee's Signature

Date: _____

Acknowledged By:

Employee's Supervisor

Date: _____

Approved By:

Department Head / Authorized Designee

Date: _____

amended: 11/05/08



Tel. No.: 473-7020 / 7022 / 7023 / 7025 / 7026
Fax. No.: 473-7024



Felix P. Camacho
Governor
Michael W. Cruz, M.D.
Lieutenant Governor

GOVERNMENT OF GUAM
(GUBETNAMENTON GUÁHAN)

DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASON)

DIRECTOR'S OFFICE
(Ufisinan Direktot)

Post Office Box 884 * Hagåtña, Guam 96932
TEL: (671) 475-1101/1250 * FAX: (671) 477-6788



Corr-6053.1
CORR-6053.1
Lourdes M. Perez
Director
Joseph C. Manibusan
Deputy Director

MAY 19 2009

HRD NO.: OG-09-0539

MEMORANDUM

To: Director, Department of Corrections
From: Director, Department of Administration
Subject: Hazardous/Environmental Pay Policy
RE: Positions at the Director's Office & Administration Services Division

Buenas yan Háfa Adai! This is in response to your telephone conversation with our department requesting clarification on the appropriateness of the authorization for hazardous duty pay for Correction Officers assigned to the [REDACTED] in your administrative office.

As provided by Section 6222, Title IV of the Guam Code Annotated, "(a) A corrections officer or any employee of the government who performs the duty of guarding prisoners or otherwise is exposed to a life threatening environment with respect to incarceration of prisoners shall be entitled to hazardous pay calculated at the rate of his or her regular wage plus ten percent (10%) for all periods he or she is on such duty. The differential shall be applicable only during time of exposure."

Pursuant to the law, the basis for the hazardous duty pay is the "guarding of prisoners..." or when an employee is "exposed to a life threatening environment with respect to incarceration of prisoners..." The law also states that the "differential shall be applicable only during time of exposure." This is the governing statute for the implementation of hazardous pay within the Department of Corrections for duties performed by its employees within the department. As stated above, the question at hand is whether or not it is appropriate to grant hazardous pay to employees at the Director's Office, Administrative Services Division, and the Parole Services Division.

When determining whether or not employees were due hazardous pay within these divisions, our office referred to CSC Memo No. 2001-224 regarding a post audit investigation on the Hazardous/Environmental Duty Pay Differential for your department (please see attachment). The Civil Service Commission (CSC) staff conducted site visits at the previous office in which the Director's Office and the Administration Services Division were housed within the Adult Correctional Facility (ACF) compound. The CSC found that although the office was housed within the compound, employees within the Director's Office and the Administrative Services Division were not eligible for the 10% hazardous differential unless they were exposed and justified the exposure to the hazardous/environmental condition based on Section 6222, Title IV of the Guam Code Annotated. The CSC determined that the employees were not considered within a life-threatening environment with respect to the incarceration of prisoners. It is only

HRD No. OG-09-0539
Hazardous/Environmental Pay Policy
Page 2 of 2

reasonable to find that status of the hazardous environment still applies within the new location of said divisions in ██████████ Hagatna. With its location outside of the ACF the divisions are not considered within a life-threatening environment with respect to the incarceration of prisoners. Therefore, it is inappropriate and non-compliant with policy that was set forth by the CSC to compensate employees assigned to the Director's Office and Administrative Services Division.

In regards to clarification as to the Parole Officers or employees assigned to the Parole Services Division, if these employees are assigned to guard prisoners or are in a life-threatening environment while performing their duties as Parole Officers, then they are entitled to the 10% Hazardous Pay differential. This is consistent with the findings of the CSC stated in the above-mentioned memorandum. Please be reminded that this also applies to other employees within the department that meet the criteria stipulated in Section 6222, Title IV Guam Code Annotated. We have also attached a copy of the Hazardous Pay / Environmental Pay Policies and Procedure for your perusal.

Please submit a list of the employees who are assigned to the Director's Office, Administrative Services Division, and the Parole Services Division for record and post audit purposes. If there are any changes to these assignments, they must be submitted to our office for record and post audit purposes. Also, our office recommends that if these employees are currently being paid the hazardous duty differential, please cease that pay immediately.

Should you have any questions, please do not hesitate to contact our Classification and Pay Branch at 475-1265 or 1123. Dangkolo na Agradesimiento!


LOURDES M. PEREZ

CSC Memo on DOC Hazardous Pay - February 2001



GOVERNMENT OF GUAM

CIVIL SERVICE COMMISSION KUMISION I SETBISION SIBIT

490 Chalan Palasyo, Agaña Heights
P.O. Box 3156 Agaña, Guam 96932
Tel: 475-1300/01 Fax: 477-3301



CSC NO. 2001-170

06 FEBRUARY 2001

MEMORANDUM

TO: Director
Department of Corrections

FROM: Executive Director

SUBJECT: POST AUDIT INVESTIGATION
Re: Hazardous/Environmental Duty Pay Differential

Hafa Adai! The Civil Service Commission has completed the post-audit review of the Hazardous/Environmental Duty Pay Differential of personnel within the Department of Corrections. The Commission's findings revealed corrective actions needed as follows:

- To cease the practice of compensating the 10% Hazardous Pay for all hours that an employee reports for duty within the office of the Director and Administrative Services Division.
- Employees within the office of the Director and the Administrative Services Division shall be compensated the 10% Hazardous Pay, pursuant to Section 6222, Title IV of the Guam Code Annotated, whenever they encounter the exposure to a life-threatening environment with respect to the incarceration of prisoners. The 10% differential shall be applicable only during time of actual exposure and is not to be based on the employee's duty schedule.
- 10% Hazardous pay granted to employees within the office of the Director and the Administrative Services Division shall be documented with copies provided the Commission for post audit purposes.

Attached is a copy of the staff report for your purview.

Please submit your response to the findings provided above within ten (10) days upon receipt of this memorandum.

Should you have any questions, please contact Ms. Mary L. G. Cruz, Personnel Management Analyst III or Mr. Juan K. Calvo, Personnel Management Administrator or myself at 475-1300/01. *Si Yu'os Ma'ase.*

Senseramente,

LUIS R. BAZA

Attachment(s)

cc: Governor of Guam; Chairman, CSC Board; Director, DQA; Director, BBMR



Commonwealth Now!

Appendix 8:
DOC Management's Response



Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lt. Governor

DEPARTMENT OF CORRECTIONS
Depattamenton Mangngurihi
P.O. Box 3236
Hagatna, Guam 96932



Jose B. Palacios
Director

Memorandum

To: PUBLIC AUDITOR
From: Director of Corrections
Subject: DOC Overtime and Hazardous Pay Audit

Ref: October 01, 2008 to May 15, 2009

Attached for your review is DOC's management response to the Audit conducted by personnel from your office.


Jose B. Palacios

RECEIVED
OFFICE OF THE PUBLIC AUDITOR

DATE: 7-16-09
TIME: 2:08 PM
BY: AZ



Tel. No.: 473-7022, 7023, 7025, 7026
Fax. No.: 473-7024

Appendix 8:

DOC Management's Response

The Department of Corrections is in receipt of the draft report from your office. The audit request was prompted by a request from a senator in the 30th Guam Legislature and in response to a tip from an unnamed citizen. The review focused on the following issues;

1. Unpaid DOC Overtime owed to DOC employees for Fiscal year 08
2. Hazardous pay concerns

In response to the audit we essentially agree with the preliminary findings and appreciate the opportunity to clarify several issues as follows;

- A. Overtime cap and implementation
- B. Equitable distribution of overtime
- C. Gov-Guam Policy conflict with FLSA
- D. OWED overtime –Over the Cap compliance with DOL recommendations
- E. Mutual Agreement? Doesn't it go both ways?
- F. Hazardous pay compliance

The Overtime Cap was implemented in January 2008 to address and control overtime as recommended pursuant to OPA report #02-08, dated November 2002. It is a management tool intended to create an equitable distribution of overtime among personnel at the DOC. Its implementation was created and guided by Gov-Guam pay provisions and statutes.

Its intent was to ensure that personnel who were actually doing the work were afforded the opportunity to volunteer for the hours as opposed to the past practice of many ranking officers and supervisors earning more money than subordinate personnel. For the most part it succeeded. Unfortunately institutional culture requires a paradigm shift; from that where they were **making** overtime to that where they **are** working overtime. I believe we are getting there albeit a little slowly.

We do not admit that we erred with respect to provisions of the overtime cap and its implementation. It should be noted that we acknowledge that Gov-Guam provisions and statutes internally were appropriate and consistent with the directives; however they were inconsistent with the Federal Standard Labor Act provisions. Hence the recommendation by DOL to pay the unpaid balance of CTA (overtime) earned after the cap had been paid out within at least two pay periods, for the affected pay periods. Had the overtime cap not been implemented we would have exceeded the funding for overtime by at least another 100%. In fact pursuant to audit findings we have saved at least \$42,349 in overtime during the audit period, for this report. FY 09 Savings are attributed to the overtime cap.

With respect to the 08 obligations, the documenting and attempt to obtain the employee's cooperation by signing an acknowledgement of the conversion to CTA was to ensure that we remained in compliance with labor law. At least we are clear on the direction we should take with respect to CTA. We have implemented the corrective action necessary

Appendix 8:

DOC Management's Response

MANAGEMENTS RESPONSE
OVERTIME AND HAZARDOUS PAY AUDIT
COMPLETED JULY 2009

Page 2 of 3

to remedy this. Yet, we still have a few who believe that they are and will still be able to receive those excess hours when FY09 closes. It's the culture.

Mutual agreement was stressed. It is understood that mutual means between two or more people regarding a specific subject or item. That's clear! Unfortunately, the employee was made to *suffer*, and therefore they must be paid. That's the irony; the audit stated that FSLA requires that compensatory time in lieu of pay must be agreed to or understood as policy, prior to the performance of overtime work. Therefore were we really in violation of FSLA? Written policy was in place and issued to each employee when they received their pay checks in January 2008. Shouldn't they have known?

The unpaid overtime is overtime owed to personnel who resisted the cap and had the attitude that management would find the money eventually. It was determined since the onset that we would have to track the numbers over the cap and convert that to CTA. We did not disregard it. Institutional culture showed that prior administrations would find the money. It was loosely called banking it because they are used to it! The audits conducted by your office have proven that the very same people are at the top of the compensations schedules consistently.

Could it be that they are just more willing to work than the others, who have the same opportunities? It is apparent that we don't have that many people breaking our doors down to work overtime. As a manager we still must ensure that we provide and ensure public safety. It's easy for me to understand a supervisor's decision to bring in someone willing to work as opposed to someone that does not really want to be here.

The hazardous pay review stressed that employees detailed to the Director's office were not entitled to receive payment for hazardous pay, while not exposed to the life threatening environment. How do you determine what is hazardous pay? Officers detailed to the Directors office received the same compensations that officers prior to them were receiving. It should be noted that the officers assigned to the directors office and Parole Services Division are housed on the fifth floor of the DNA building, with the same amount of exposure to inmates and or parolees.

Pursuant to peace officer provisions in 8 and 9GCA they are required to protect life and preserve the peace. Their offices are at the DNA bldg but, they still routinely perform work outside of the office at our different facilities or participate in operations that meet the hazardous condition requirements.

Their assignments DO NOT RELIEVE them of the responsibility to respond to emergencies and or to assist in our day to day mission objectives. They are not pencil pushers or clerks. They are officers and are entitled to hazardous pay and should be compensated. Their work hours are justified as their caseloads and or work assignments require them to work at our facilities, monitor parolees and assist in fugitive hunts and apprehensions.

Appendix 8:
DOC Management's Response

MANAGEMENTS RESPONSE
OVERTIME AND HAZARDOUS PAY AUDIT
COMPLETED JULY 2009
Page 3 of 3

Good things came out of this audit. We are especially proud of the fact that we were able to save money with the Overtime Cap. It is viable and can work. It just takes time and a shift in the way our organization responds to the changes. At the end of the day we know that we have established some equity in the way overtime is earned and have ceased some abuse of the system.

We thank you for the opportunity to review the report and acknowledge and appreciate the candor and cooperation your personnel extended towards our agency. Mr. Cooper-Nurse and Ms. Perez are extremely professional and should be commended for ensuring that they addressed the issues appropriately.


Jessie Q. Tupaz
Captain

Do you suspect fraud, waste, or abuse in a government agency or department? Contact the Office of the Public Auditor:



- **Call our HOTLINE at 47AUDIT (472-8348);**
- **Visit our website at www.guamopa.org;**
- **Call our office at 475-0390;**
- **Fax our office at 472-7951;**
- **Or visit us at the PNB Building, Suite 401
In Hagåtña**

All information will be held in strict confidence.