

HOURS OF WORK/ OVERTIME MODEL POLICY

(Revised and Effective 3/3/2014)

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Federal Requirements

The Fair Labor Standards Act (FLSA) establishes minimum wage rates, maximum work hours, overtime pay requirements, equal pay standards, and child labor restrictions for employees subject to its provisions.

Exempt/Nonexempt Status Under The Fair Labor Standards Act

Employees are considered “Exempt” if their job duties, or their salary, meet certain thresholds within the FLSA. These exempt employees are not subject to the FLSA minimum wage, overtime, or record keeping requirements. As such, exempt employees are expected to work as many hours as required to perform the duties of the position. The exempt status of an employee in a bona fide executive, administrative, professional, or computer employee position shall be determined by the Agency Head or his/her designee.

Non-exempt employees are covered by, or subject to, the minimum wage, overtime, and recordkeeping requirements of FLSA. All employees who are not considered exempt from the FLSA will be considered non-exempt.

Overtime/Compensatory Time

Overtime is all hours worked in excess of 40 in a seven (7) consecutive day work period. A non-exempt employee shall be paid no less than one and one-half (1 1/2) times his/her regular rate of pay for all hours worked over 40 in a workweek or granted compensatory time at a rate of one and one-half (1 1/2) hours for each hour of overtime worked. Non-exempt employees, who have a scheduled workweek of 37.5 hours, shall not receive additional compensation nor compensatory time for hours worked between 37.5 and 40.0 hours per workweek.

The requirements that overtime pay must be paid or compensatory time granted to nonexempt employees after 40 hours of work in a workweek shall not be waived by agreement between the supervisor and the employee.

Compensatory time may be accumulated up to 240 hours of compensatory time. For overtime worked for an employee with an accumulation of 240 hours of compensatory time, the overtime must be paid in the employee's next regular paycheck.

(Note: Special overtime provisions may apply to law enforcement employees, fire protection employees, and for hospital, nursing home, and mental hospital employees. See toolbox options.)

Overtime Usage

The use of overtime should be an exception to the regular work schedule in any unit. An employee should only be required to work overtime on an occasional basis to meet a sudden increase in the workload, to overcome productive time lost due to some mechanical failure, or to meet the demands of a crisis situation.

When any unit and/or individual is found to be consistently charging overtime, the functions of that unit and/or individual should be reviewed by appropriate management. Every attempt should be made to avoid the repetitive and chronic use of overtime.

It shall be the responsibility of each manager to determine that the provisions of this policy are administered in the best interest of the Agency. Although each manager is responsible for the requesting of overtime, it is equally important to control unauthorized overtime. Unauthorized work shall be counted as hours worked if the responsible manager could have stopped it but did not, or if he/she knows or has reason to know of this practice.

Hours Worked

Hours worked include all time that the employee is required to be on duty or at the prescribed workplace and all time during which the employee is permitted to work. The hours worked include any bona fide work which the employee performs on or away from the premises if the supervisor knows or has reason to believe that the work is being performed. Time spent in leave status is not considered hours worked.

Under warranted circumstances, a nonexempt employee may be allowed to work in excess of the normal workday and may be given time off during the same workweek at the rate of an hour for an hour to avoid working over 40 hours in a workweek. This adjustment is not allowed for hours worked between 37.5 and 40.0 hours during any workweek. This type of work rescheduling precludes working over 40.0 hours in a workweek and eliminates the need for overtime payment.

General Provisions on Hours Worked

On-call time is not regarded as work time unless an employee is required to remain at the employer's premise or prescribed work place or is so restricted that the employee cannot use the time effectively for his or her own purposes. If the employee is not confined to his or her home or

any particular place but only required to leave word where he or she can be reached, then the hours are not considered working hours.

A bona fide meal period of thirty (30) minutes or more which occurs during the scheduled workday is not hours worked if the employee is completely relieved from duty for the purpose of eating a meal. For this Agency, the meal period (lunch period) is one (1) hour each workday.

Breaks of short duration must be counted as hours worked. One morning and one afternoon break of no more than fifteen (15) minutes each is permitted. However, agencies may establish breaks but are not obligated to establish breaks, as breaks are a privilege and not a right. Breaks shall not be used to allow an employee to come in late, to leave early, or to extend the lunch period.

Travel time for nonexempt employees may be hours worked under some conditions. Ordinary home-to-work travel or work-to-home travel is not working time. All time spent traveling on one-day assignments is considered time worked regardless of time of day or day of the week.

Travel away from home involving an overnight stay for nonexempt employees is considered time worked when it occurs during the employee's normal working hours. This provision is applicable not only on regular working days, but also during the corresponding hours of non-working days.

When a non-exempt employee by reason of official responsibilities is required to attend lectures, meetings, training programs, etc., such time shall be considered work time.

Time off for holidays, paid leave, and compensatory time are not counted as hours worked when calculating overtime.

Agency's Workweek

The normal workweek for the Agency shall be 37.5 hours. However, no employees shall receive additional compensation or compensatory time for hours worked between 37.5 and 40.0 hours per workweek. For record keeping purposes, the workweek begins at 12:01 a.m. on Sunday and ends at 12:00 midnight on Saturday. Any employee may be required to work up to forty (40) hours per workweek without additional compensation.

Compensation

The regular rate of pay includes all remuneration for employment paid to an employee to include base pay, longevity increases, and shift differentials. Compensation of all employees is based on forty (40) hours per week or 2080 hours per year. Non-exempt employees must not be paid less than minimum wage.

Impact of Status Change

If a non-exempt employee accepts a position that is considered exempt either within the employee's own agency or with a separate state agency, compensatory time must be paid prior to the employee starting in the exempt position.

If a non-exempt employee separates from employment or moves to another state agency, any accrued compensatory time must be paid. Compensatory time must be paid at a rate of compensation not less than either the average regular rate received by the employee during the last three years of employment or the final regular rate received by the employee, whichever is higher.

Holidays

An employee who is required to work on a legal holiday shall be given compensatory holiday leave credits in accordance with Section 19-708.04 of the State Human Resources Regulations; however, time worked on a legal holiday shall be used in computing total hours worked. Holiday compensatory time will be paid to the employee, if after 90 days of the holiday the employee has not taken the holiday compensatory time. All non-exempt employees will be paid for unused holiday compensatory time upon separation of employment or upon an employee starting in an exempt position.

Exempt Employees and Compensatory Time

Exempt employees may receive compensatory time off for hours worked, for time spent traveling, or for attendance at lectures, meeting, training programs, etc., in excess of the normal workweek (40 hours per week). (NOTE: If granted, the compensatory time must not be at a rate greater than one (1) hour of compensatory time for each hour worked in excess of 40.0 in the official workweek and may be at a lesser rate. Exempt employees must not be paid for overtime.)

Temporary Employees

The hourly rate is the "regular rate" for temporary employees. This rate is calculated by dividing the annual salary by 2080 hours. Temporary employees shall be compensated for all hours worked. All temporary employees must be designated as non-exempt.

(NOTE: Temporary employees may be designated as exempt if the agency is not on the South Carolina Enterprise Information System (SCEIS); however, an exempt temporary must be paid a salary regardless of hours worked.)

Toolbox Options

Work Period for Law Enforcement and Fire Protection Employees

The work period for law enforcement employees and fire protection employee may be established from seven to twenty-eight consecutive days. Law enforcement employees must receive overtime compensation in the form of overtime payment or compensatory time for all hours worked over 171 in a twenty-eight day work period, or a proportional amount of hours in a shorter work period. Fire protection employees must receive overtime compensation in the form of overtime payment or compensatory time for all hours worked over 212 in a twenty-eight day work period, or a proportional amount of hours in a shorter work period.

Maximum Hours Worked (Rounded) Before Overtime:

Consecutive-Day Work Period	Hours Of Fire Protection	Hours Of Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73

11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

Law enforcement and fire protection employees may accumulate up to 480 hours of compensatory time. For overtime worked for an employee who has accumulated 480 hours of compensatory time, the employee must be paid.

Work Period for Hospital, Nursing Home and Mental Hospital Employees

An alternative method of calculating overtime pay for nonexempt employees who work in “hospitals or an establishment which is ... primarily engaged in care of the sick, the aged, or the mentally ill or defective, who reside on the premises” may be used. This method allows overtime for such employees to be calculated on a 14-day period (rather than the standard seven-day period) as long as the employees are paid overtime for hours worked in excess of eight hours per day ***and*** in excess of 80 hours in a 14-day period. In this calculation method, overtime must be paid on a daily as well as a biweekly basis.