

HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES

Chapter 4	General Personnel Policies	Effective:	November 2000
Section 4.6	Classification and Compensation Administration	Revised:	December 2004
Policy 4.6.5	Fair Labor Standards Act (FLSA): Work Hours and Overtime Provisions for Non- Exempt Employees	Responsibility:	Vice President for Human Resources

FAIR LABOR STANDARDS ACT (FLSA): WORK HOURS AND OVERTIME PROVISIONS FOR NON-EXEMPT EMPLOYEES

Policy

It is the policy of the Health Science Center that the work schedules are organized so that non-exempt employees do not work in excess of established work periods, except when demanded by operating necessities.

It is the practice of the Health Science Center, whenever possible, to compensate employees for overtime services by granting *Fair Labor Standards Act (FLSA)* compensatory time off. Only under exceptional circumstances, when allowing compensatory time off is impractical, will FLSA overtime compensation be paid.

Overtime compensation regulated by the FLSA requires that non-exempt employees must be compensated for hours actually worked in excess of forty (40) during a workweek (Monday 12:00 AM through Sunday 11:59 PM). This compensation may take the form of time off or payment.

Applicability

This policy applies to all non-exempt classified employees of the Health Science Center. Only certain classified employees are non-exempt under FLSA; refer to the *Classified Pay Plan and Job Descriptions* to determine exempt or non-exempt status of classified employees.

Work Hours

Work hours include the time spent by the employee in performing duties required by the department and pursued necessarily and primarily for the benefit of the Health Science Center. For non-exempt employees, the typical work schedule is forty (40) hours during the workweek. If the department allows or permits the employee to work beyond the forty (40) hours, this time must be counted for compensation and overtime purposes. Departments should exercise control and enforcement and see that work is not performed which department management did not intend to be performed.

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**Rest Breaks and
Lunch Time**

Rest periods of short duration are not required by FLSA, but may be allowed by departments. Common practice has been to allow a fifteen (15) minute rest break in the morning and in the afternoon. Departments have discretion on whether to allow rest breaks or not. Rest periods count as time worked for FLSA purposes.

Lunch periods are allowed for a period of one hour. A lunch period of at least thirty (30) minutes is not considered work time and therefore is not counted for FLSA purposes. In order to qualify as a bona fide lunch period, the employee must be completely relieved from work duty for the purpose of eating regular meals or conducting personal business and must be at least thirty (30) minutes. The Health Science Center allows one hour lunch periods for all employees.

Because of recordkeeping requirements under FLSA and potential inequity treatment of employees, departments are discouraged from allowing their employees to work through their lunch periods in order to make up time off or in anticipation of time off.

**Attendance at
Training
Programs,
Meetings, and
Lectures**

Generally, attendance at training or educational programs, meetings, lectures, etc. is counted as time worked if the attendance is directly related to the employee's job, if it occurs during the employee's regular working hours, and if it is required or allowed by the department.

Travel Time

Travel time for job-related trips may or may not count as work time for FLSA purposes depending on the kind and time of travel involved.

Home to Work for Special Assignment

Travel from home to work is an ordinary and normal incident of employment and therefore does not have to be paid. However, a non-exempt employee who travels to a seminar, training session, conference, etc. that lasts for a single workday must be paid for the travel time spent to the location of the special assignment.

Example: A non-exempt employee who travels two (2) hours to a

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seminar, attends the seminar for eight (8) hours and then drives home for two (2) hours must be paid for the eight (8) hours at the seminar and the four (4) hours of travel time (total of 12 hours). However, the employee's normal commute time to work plus any mealtime at the seminar can be deducted from the total of twelve (12) hours.

Travel As Part Of The Employee's Work During The Day

Time spent traveling as part of the employee's job must be counted as hours worked and must be paid. This would apply where the employee is required to travel from work site to work site.

Overnight Travel

If a non-exempt employee travels to a seminar, training session or conference and leaves the day before the seminar, then only the time that cuts across (overlaps) the employee's regular work day must be paid.

Example: If the employee normally works from 8:00 AM to 5:00 PM and leaves for the seminar at 4:00 PM and arrives at the seminar at 9:00 PM, only one hour of travel time must be paid. In this case, the travel time portion that overlaps the employee's workday (which ends at 5:00 PM) would be paid.

Travel time on non-working days (such as Saturday and Sunday for most employees) is also considered work time if conducted during the employee's normal work hours.

Example: If the 8:00 AM to 5:00 PM employee travels on a Saturday, the time between 8:00 AM and 5:00 PM on Saturday must be paid. Meal times can be deducted from this time period provided the employee did not perform any work during the meal time. If the travel time occurred outside of the 8:00 AM to 5:00 PM time period, then the travel time is not compensable.

Overtime Provisions

The overtime provisions of the FLSA require that non-exempt employees who physically and actually work in excess of forty (40) hours in a work week must be compensated (FLSA compensatory time or paid) at a rate of 1.5 for the excess hours.

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Example: An employee who works forty (40) hours Monday through Friday and also works on Saturday for four (4) hours must be paid forty (40) hours straight time at the employee's regular rate of pay plus be given six (6) hours (4 hours in excess of 40 times 1.5) of FLSA compensatory time.

Paid time off, such as sick leave or vacation leave, is not included in the forty (40) hour overtime calculation because the employee is not physically and actually working during sick or vacation leave.

Example: An employee who physically and actually works four (4) eight-hour days out of the week and is on paid sick leave one day in the same workweek and then works four (4) hours on Saturday would be compensated for forty-four (44) hours – all at straight time. The physical work hours are counted at thirty-six (36) and the non-physical hours are eight (8) for a total of forty-four (44) hours. Since the physical total work hours are less than forty (40), the employee would get compensated at straight time and not time and a half.

Example: An employee who physically and actually works thirty-eight (38) hours during the normal workweek and took two (2) hours of vacation and then works three (3) hours on Saturday would get paid for the two (2) hours of vacation and forty-one (41) hours of physical and actual work. However, the one hour worked in excess of forty (40) would be compensated at 1.5 which would entitle the employee to an hour and a half of FLSA compensatory time off.

**FLSA
Compensatory
Time (Time and a
Half)**

FLSA compensatory time is the time off or hourly pay rate equal to one and a half times (1.5) for hours physically and actually worked in excess of forty (40). Provisions regarding FLSA compensation include the following:

1. Employees may accrue up to 240 hours of FLSA compensatory time; since compensatory time is accumulated at time and one-half, this is only 160 hours of actual overtime work. University Police Officers may accrue up to 480 hours of FLSA compensatory time. Any accumulated FLSA compensatory time

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in excess of 240 hours (or 480 hours for University Police Officers) must be paid to the employee.

2. An employee who has accrued FLSA compensatory time and requests use of the time must be permitted to use the time off within a reasonable period after making the request if it does not unduly disrupt the operations of the department. Departments may require employees to use up any FLSA compensatory time balance before using vacation, sick or personal leave.
3. FLSA compensatory time off may be carried over from one year to the next, provided the accrual does not exceed the maximum limit of 240 hours (480 hours for University Police Officers).
4. Employees who have accrued, but not taken FLSA compensatory time off are paid for such overtime upon termination, death, or when compensatory time balance exceeds 240 hours figured at:
 - a. the average regular rate received by the employee during the last three years of State employment; or,
 - b. the final regular rate received by the employee, whichever rate is higher.

Regular rate includes any longevity pay, hazardous pay, and benefit replacement pay (BRP).

**FLSA Paid
Compensation
(Time and a Half)**

At the discretion of the department, a request may be made to pay a non-exempt employee rather than grant FLSA compensatory time. Such requests are made when it would create an undue hardship or restrict staff resources on the department by allowing non-exempt employees to use their FLSA compensatory time.

1. Any paid overtime service required must have the prior approval of the Director of Payroll Services. The request for approval must include a justification as to why time off could not be granted.

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2. FLSA overtime compensation is paid at one and a half times (1.5) the employee's regular rate of pay. The regular rate of pay shall include longevity pay and hazardous duty pay, and benefit replacement pay (BRP), if applicable.
 3. FLSA paid compensation is paid on the overtime payroll and any overtime transactions must be submitted in the DRS system in accordance with procedures and the payroll calendar.
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**Non-FLSA
Compensatory
Time (Straight
Time)**

Non-FLSA compensatory time is either time off or paid time for hours recorded during a workweek that includes hours worked, leave hours taken or where an employee works on an official holiday. In such situations, the employee's payroll record would reflect a combination of paid leave and hours worked that exceed forty (40) hours but who has not physically and actually worked more than forty (40) hours to warrant time and a half FLSA compensatory time.

**Provisions for
Non-FLSA
Compensatory
Time**

As in FLSA compensatory time, non-FLSA compensatory time may be granted as time off or paid to the non-exempt employee.

1. In certain circumstances, a non-exempt employee may not have physically and actually worked more than forty (40) hours in a work week, but the total number of hours worked plus paid leave or holiday hours exceeds a total of forty (40). In such a case, the non-exempt employee is allowed equivalent time off from work for the excess hours or may be paid at straight time.
 2. Non-FLSA compensatory time is granted as time off on a straight hour-for-hour basis or paid, with prior approval as discussed above, on a straight hourly pay rate.
 3. Non-FLSA compensatory time must be taken during the 12-month period following the end of the workweek in which it was earned. An employee may not be paid for the unused time.
 4. Non-FLSA compensatory time cannot be transferred from one state agency to another.
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5. An employee must use all accrued non-FLSA compensatory time before transferring from one department to another. However, exceptions may be made if the receiving department is willing to accept the transfer of the individual with accrued equivalent leave.
 6. Employees will not be paid for any unused non-FLSA time upon termination or death.

Recordkeeping

FLSA and non-FLSA compensatory time balances must be recorded separately and must not be combined for any reason by departments.
