

DIVISION OF AGRICULTURE MINIMUM WAGE AND OVERTIME POLICIES UNDER THE FAIR LABOR STANDARDS ACT

INTRODUCTION

The Fair Labor Standards Act (FLSA) sets minimum wage, overtime pay, equal pay, recordkeeping, and child labor standards for employees who are covered by the Act and are not exempt from specific provisions.

All faculty, staff and student employees of the Division of Agriculture, University of Arkansas System, hereinafter called "Division," are covered by the Act. There are certain provisions of the Act that exempt certain classes of employees from its minimum wage and overtime pay requirements.

Employees that are considered to be in an executive, administrative, professional, or some computer-related position are exempt from the overtime provisions of the Fair Labor Standards Act. Faculty and all other non-classified employees of the Division should fall within these categories and therefore are exempt from the overtime provisions of the Act. Any questions concerning the exempt status of an employee or class of employees should be directed to the appropriate Personnel Officer.

In addition, the Act prescribes at what age and in which types of occupations minors can be employed. In this context, the employment of minors within the Division of Agriculture must be taken with care. Please contact the appropriate Personnel Officer prior to employment of individuals under the age of 21.

USE OF OVERTIME TO MEET EMERGENCY AND PEAK WORK-LOAD REQUIREMENTS

The decision of whether to use permanent employees on an overtime basis or to hire temporary personnel will depend on the most practical, efficient and economical way to meet the mission of the Division.

State policy is that overtime pay for state employees is the least desirable method of compensation for overtime work. Ark. Code Ann. § 19-4-1612. The Division has adopted this policy.

All overtime is to be authorized in advance by Unit Heads or other designated supervisors unless the respective Associate Vice President reserves this authority. Each Administrative Unit will establish administrative controls to ensure that only essential overtime is authorized and budget allocations are not exceeded.

MINIMUM WAGE PROVISIONS

The Division of Agriculture follows all of the minimum wage provisions of the Act. It is also Division policy to pay all student employees no less than the Federal minimum wage.

WORK WEEK DEFINED

The Act requires overtime for hours actually worked over 40 in a work week. A work week consists of seven consecutive twenty-four-hour periods or a 168-consecutive-hour period as designated by the employer. Two weeks cannot be averaged together to calculate overtime hours or pay. 29 C.F.R. § 778.105. For Division employees the work week begins on Sunday and ends on Saturday.

Vacation, holiday, sick leave and other official leaves of absence are not counted as hours worked for the purpose of computing overtime at time and a half. A Division employee shall not be paid at time and a half for work on Saturday, Sunday or any holiday unless the hours worked on those days cause the 40-hour work week maximum to be exceeded. An employee's overtime compensation will be computed only on hours *worked* during the work week. An employee who is assigned to work on a Board of Trustees-approved holiday may be given an alternate day off to compensate for the worked holiday in lieu of pay at the discretion of the supervisor.

COMPENSABLE WORK TIME FOR NON-EXEMPT EMPLOYEES

Employees who continue to work after their scheduled day is over or begin work prior to the normal start time, albeit voluntarily, are engaged in compensable working time. 29 C.F.R. § 785.11, 785.13.

An employee must have prior approval before performing any overtime work. If the employee works any overtime without prior approval from his or her supervisor, the employee may be subject to discipline, up to and including termination. Notwithstanding any disciplinary action taken, the employee must still be compensated for any overtime work performed.

It is also the responsibility of the supervisor to ensure that their non-exempt employees do not perform any overtime work without prior supervisory approval. A supervisor who does not adhere to this overtime policy may be subject to disciplinary action.

ON AND OFF DUTY

The following activities are not to be counted toward the 40-hour work week and overtime calculation limit:

- The employee has completed his scheduled hours and is allowed to leave the job. Time spent loitering at the job site cannot be considered work time.
- Employees who voluntarily arrive at the work site before their scheduled start time cannot have this waiting time compensated. But if the employee is permitted to begin work before the scheduled start time, these hours must be included in the total hours worked for the week.
- Meal time is not considered work time under the FLSA. Bona fide meal periods are not work time. The term "bona fide meal periods" does not include coffee breaks or time for snacks. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. The employee is not relieved if he or she is required to perform any duties, whether active or inactive, while eating. Whether or not they leave the work site is immaterial, as long as the employee is relieved from their work duties/responsibilities. Business-related interruptions may compromise this free time and result in overtime for the affected employee. 29 C.F.R. § 785.19.
- For individuals who reside on the Stations or at the University Farm, the time spent where they have the freedom to determine their own activities is not includable in work time calculations. 29 C.F.R. § 785.23.
- Normal commuting time to and from work is not compensable work time.
- Travel time after work hours as a passenger on a plane, bus, taxi, or train is not considered work time. However if the employee is performing work while traveling after work hours as a passenger those hours will be considered in the compensable work week. 29 C.F.R. § 785.39, 785.41.

- Idle time during travel status such as meal periods, sleep periods and other rest periods are not considered work time under the FLSA.

The following items are to be included in the work time calculations:

- Rest periods of short duration running from five to twenty minutes, (e.g. snack breaks, coffee breaks.) 29 C.F.R. § 785.18.
- The attendance of the employee at approved work-related training programs, lectures and meetings. 29 C.F.R. § 785.29.
- Travel time that is incurred during the normal work hours, other than normal commuting time to and from work, is compensable work time. 29 C.F.R. § 785.38.
- Travel that keeps an employee away from home overnight is considered travel away from home. The travel time incurred during the employee's normal work hours is compensable work time, even if the travel time is on a Saturday or Sunday. 29 C.F.R. § 785.39.

OCCASIONAL OR SPORADIC EMPLOYMENT FOR NON-EXEMPT EMPLOYEES

If at their own option a Division employee takes an occasional or sporadic part-time position in a different capacity (occupational category) from that of the employee's regular duty assignment, the hours worked at the part-time position will not be used to calculate an employee's overtime pay. 29 C.F.R. § 553.30.

CONCURRENT EMPLOYMENT FOR NON-EXEMPT EMPLOYEES

If an employee enters into a concurrent employment relationship with another state agency or component of the University of Arkansas System, all hours worked by the employee will be used to calculate an employee's overtime pay. Concurrent employment may only occur upon written approval from the respective Associate Vice President and the State Office of Personnel Management.

COMPENSATION FOR OVERTIME WORKED FOR NON-EXEMPT EMPLOYEES

The FLSA authorizes a public agency to provide compensatory time off in lieu of monetary overtime compensation at a rate of not less than one and one-half hours of compensatory time for each hour of overtime worked. 29 C.F.R. § 553.22. The Division has adopted this method as the preferred method of compensating employees for overtime worked.

In circumstances in which the granting of compensatory time off is impractical, approval may be requested in writing on a case-by-case basis of the respective Associate Vice President or his or her designee to pay the employee for the overtime worked.

ALLOWABLE LIMITS OF OVERTIME ACCRUAL FOR NON-EXEMPT EMPLOYEES

Employees may accrue up to 240 hours of compensatory time. Since compensatory time accumulates at time and one-half, only 160 hours of actual overtime is allowed. 29 C.F.R. § 553.22. Compensatory time should be taken during the calendar year in which it was earned. At the end of the calendar year, if an employee has more than 240 hours of accrued but unused compensatory time, the employee must receive compensation in cash payment at the employee's current hourly rate for any hours in excess of the 240 hour limit. Upon termination of employment, an employee shall be paid for all of the unused compensatory time at the employee's final regular wage or the average regular wage during the last three years of employment. The method used will be the higher of the two methods.

Seasonal activity includes work during periods of significantly increased demand that is of a regular and recurring nature. There are two criteria to be met before an

overtime activity can be considered seasonal: 1) whether the activity is a regular and recurring aspect of the employee's work; 2) whether the projected overtime hours during the period of significantly increased demand are likely to result in the accumulation of more than 240 hours of compensatory time. For Division employees involved in seasonal activity employment, the amount of overtime that may be accrued is raised to 480 hours¹. 29 C.F.R. § 553.24. As with non-seasonal employees, overtime compensatory time should be taken during the calendar year in which it was earned. At the end of the calendar year, if the employee engaged in seasonal activities has more than 480 hours of accrued but unused compensatory time, the employee must receive compensation in cash payment at the employee's current hourly rate for any hours in excess of the 480 hour limit. Upon termination of employment, an employee shall be paid for all of the unused overtime compensatory time at the employee's final regular wage or the average regular wage during the last three years of employment. The method used will be the higher of the two methods.

COMPENSATORY TIME OFF AGREEMENT FOR NON-EXEMPT EMPLOYEES

All non-exempt employees must receive and sign a Compensatory Time Off Agreement upon employment with the Division of Agriculture. 29 C.F.R. § 553.23. The agreement is included as Appendix A of this policy.

TIME SHEETS FOR NON-EXEMPT EMPLOYEES

The Act requires employers to maintain records that show the time and day of week when the employee's workweek begins. Hours worked each day and total hours worked each workweek must also be recorded. 29 C.F.R § 516.2. All non-exempt employees must complete a time sheet, sign, and submit the time sheet to his or her supervisor for approval. See Appendix B of this policy.

It is the responsibility of the non-exempt employee to complete a time sheet. If a non-exempt employee does not complete a time sheet on a timely basis, he or she may be subject to disciplinary action, up to and including termination. In addition, if a supervisor does not request and/or approve a time sheet from a non-exempt employee, the supervisor may be subject to disciplinary action. Departments may elect to utilize time clocks in lieu of time sheets upon the approval of the appropriate Associate Vice President. 29 C.F.R. § 785.48.

¹ If it is determined, for the benefit of a department, to continue operating in the most practical, efficient and economical way and it becomes impractical to carryover accrued compensatory hours, the respective Associate Vice President or his or her designee may pay the balance of accrued compensatory hours in cash at the end of the fiscal year for those employees engaged in "seasonal" activity.