About the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) is a federal law that sets minimum wage, overtime pay, equal pay, record keeping and child labor standards for employees (who are covered by the Act) in the private sector as well as those employed in federal, state and local government. The FLSA was enacted by the United States Congress in 1938 and amended several times since.

The Department of Finance & Administration has the responsibility for ensuring and maintaining compliance with the FLSA. Human Resources assigns each position to either overtime eligible or overtime exempt status, based upon the nature of the position's duties and its level of responsibility and the testing criteria established by the Fair Labor Standards Act. The Department of Finance & Administration awards agency employees compensatory time at 1 ½ hour for every hour worked over 40 in a work week. The Department of Finance & Administration's work week begins on Monday morning at 12:01 a.m. and runs until Sunday night at 12:00 p.m.

The Office Director is responsible for control of overtime. Overtime, to the extent possible, will be authorized in advance by the responsible supervisor.

Fair Labor Standards Act requirements apply to positions and employees, not to job titles. Each individual position must be analyzed to determine whether the position is overtime eligible or exempt from the overtime and minimum wage requirements.

Basic Provisions of the Fair Labor Standards Act (FLSA)

1. Minimum Wage.

The Fair Labor Standards Act (FLSA) requires employers of covered employees who are not otherwise exempt to pay these employees a minimum wage of not less than $7.25 per hour (7/24/09). Though the FLSA allows for certain full-time students and student learners to be paid less than the minimum wage under special certificates issued by the Department of Labor. The notice of federal minimum wage must be displayed where employees can readily see it.

2. Child Labor Restrictions.

   The Fair Labor Standards Act (FLSA) regulates the minimum age and maximum hours of employment of minors in certain occupations with different standards for employment of minors who are 14-15 years old and those who are 16-18 years old.

3. Record Keeping.

   Employers covered by the Fair Labor Standards Act (FLSA) are required to keep records for a certain amount of time on wages, hours, sex, occupations, and other terms and practices of employment for exempt and non-exempt employees.

4. Overtime Liability.

   Only non-exempt employees are covered by the overtime liability regulations. A non-exempt employee earns overtime for time worked in excess of 40 hours ***in a workweek***.

   The Fair Labor Standards Act (FLSA) does not limit the number of hours that an employee can work in a day or in a week. It simply requires that overtime hours be compensated at a rate of not less than one and one-half times the non-exempt employee's regular rate of pay for each hour worked in a workweek in excess of 40 hours per week. For instance, working 9 hours in a regular 8-hour day does not constitute overtime until or unless the 40-hour maximum has been reached. Additionally, overtime liability is not reached until 40 actual hours have been worked ***in the workweek***. This is not the same as "in pay status" which takes into account time off for paid leaves of any sort.

   A special provision authorizes public agencies 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, the same calculation used for monetary overtime. The Department of Finance & Administration has adopted this provision and reserves the right to use compensatory time off in lieu of monetary payment for overtime worked.

5. Equal Pay Act of 1963.

The Equal Pay Act was enacted as an amendment to the Fair Labor Standards Act (FLSA). The equal pay regulations prohibit an employer from discriminating against employees on the basis of sex by paying employees of one sex less than employees of the opposite sex for equal work performed under similar working conditions within an establishment on jobs that require equal skill, effort and responsibility.

What the FLSA Does Not Cover

1. Meal and Rest Periods.

The Fair Labor Standards Act (FLSA) does not require that employers give their employees meal or rest periods (breaks), regardless of the number of consecutive hours they work. However, giving employees some sort of meal break during the workday is common practice. Though the FLSA does not mandate meal or rest periods, it does address the issue of compensability of such time.

2. Extra Pay for Saturdays, Sundays, or Shift Work.

Additional compensation is not due for work performed on Saturdays and Sundays. The FLSA only requires that non-exempt employees are to be paid at one and one-half their regular rate of pay for hours worked in excess of 40 per week. However, the Department of Finance & Administration does pay shift differential to Capitol Police Officers who work in positions which are classified as non-exempt and who are eligible to receive overtime and are assigned to the "B" and "C" Shift.

3. Holiday, Sick, Vacation, and Other Leaves.

The FLSA does not require either paid or unpaid leave for sickness, holidays, vacations, jury duty, personal time or military service for most employees. However, the State of Mississippi has provided employees with benefits associated with paid holidays and paid leave. Additionally, the Family Medical Leave Act is also in force.

4. Pay Raises or Fringe Benefits.

The FLSA does not mandate pay raises or fringe benefits. The Act only requires that non-exempt employees be paid no less than the minimum wage for each hour worked.

5. Consent to Work Overtime.

The FLSA does not require notice to or consent from employees when scheduling overtime hours. Employers have the discretion to establish employee work schedules as they desire so long as workers are compensated properly and wages and overtime requirements are observed. For most Department of Finance & Administration full-time employees, the standard workday is eight hours, and the standard workweek is 40 hours during a given seven-day workweek. Advance notice of work schedule is recommended in those situations where an employer wants to avoid placing an employee into overtime status. For instance, if an employer knows that in the next workweek there will be cause to work varying hours, then the employer can readjust the work schedule to accommodate that temporary need so long as the employee is notified of the proposed change in advance. This advance scheduling allows the employer to avoid the overtime situation by readjusting the workday and by scheduling time off for the employee within the same workweek. Two other instances would allow for adjustments to the workweek to avoid overtime liability: the employer could require the employee to take equivalent time off in the workweek in which additional time is worked; or, the employee could request or agree to take the time off. In the latter two cases, no advance notice of the schedule change is required.

Exempt and Non-Exempt Status

The exempt status of an employee, i.e. exempt vs. non-exempt, is determined by the duties of the position and the employee in the position when applicable. Status is not determined based on the job title of the position. The key distinction between exempt and non-exempt status is the overtime liability issue. Determining the status of all positions and employees as exempt or nonexempt is the responsibility of Human Resources.

Employees with salaries below the FLSA threshold of $455/week ($23,260/year) are automatically non-exempt and eligible for overtime pay. This is true for all employees, including part-time workers. (The salary is not prorated to equal a full-time salary.) Employees whose starting salaries fall below $455/week ($23,660/year) will automatically default to non-exempt.

Even when the minimum starting salary is reached, each position is still considered to be non-exempt unless a formal review has been conducted. Reviewing a position for exempt status involves examining the position description and organizational chart, auditing the job and the employee, verifying degree requirements as indicated for the professional exemption, and applying the tests for exemption as set forth by the Fair Labor Standards Act. There are four categories of exempt status used: executive exempt, administrative exempt, professional exempt, and computer exempt.

Exempt Employees must meet basic salary threshold of $913/week $47,476/year) and meet applicable Department of Labor Tests for executive exemption, administrative exemption, professional exemption, or computer exemption.

Exempt employees are paid a salary that covers the amount of time required to perform the job. That salary cannot be reduced because of variations in the quality or quantity of work performed. Because of this, exempt employees are only required to report exceptions to their normal schedule.

A normal workweek is to be established for exempt employees who are expected to be available during the normal workday. Although compensation is not determined by the specific number of hours worked, an exempt position normally requires a *minimum* of 40 hours per week to meet the needs of the agency. Exempt employees must follow leave request procedures established by their supervisor for any time away from work. All time away from work should have prior approval.

Employers are not required to award compensatory time for extra hours worked to an exempt employee. However, the Department of Finance & Administration in practice does award compensatory time on an hour per hour basis.

Non-Exempt Employees

Overtime is the term given to hours worked beyond 40 in one workweek. Overtime hours are compensated either monetarily (pay) or in compensatory time off, both at the one and one-half time rate for each hour over 40.

The granting of overtime is contingent upon an existing need, usually temporary, such as additional workload, special projects or events, or to cover the absence of another employee. Overtime is reached once an employee has worked beyond the 40-hour maximum allowable hours in a given workweek. FLSA Compensatory Time creates a liability for the agency, and must be paid out of the Office's budget if the employee separates employment.

In determining whether an employee has worked any overtime, only those hours actually worked will be considered. This is not the same as "in-pay status" which includes all paid leave hours, no matter the type. All hours over 40 are not necessarily FLSA Overtime. For example, work weeks in which there is a holiday or where the employee has taken leave and where the number of hours actually *worked i*s less than or equal to 40, but when added to leave time taken becomes greater than 40. In this case, the extra hours are termed Agency Comp Time.

Employees who have requested the use of compensatory time will be permitted to use such time within a reasonable period after making the request if use of the time does not unduly disrupt the operations of the unit. Mere inconvenience to an employer is insufficient reason to deny an employee's request to use compensatory time. The Department of Finance & Administration may opt to pay out all or any portion of compensatory time due an employee at the agency's discretion without affecting subsequent granting of compensatory time for future overtime worked.

The agency may pay out FLSA compensatory time when an employee promotes or transfers. The FLSA compensatory time must be paid out if the employee earns in excess of 240 hours or separates employment with the agency.

Travel and Training for Non-Exempt Employees

The principles that apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved. Travel scenarios differ greatly and advance planning in conjunction with Human Resources is often helpful.

To and From Work:

Time spent "walking, riding, or traveling to and from the actual place of performance of the principal activity {work}" is not work time and therefore is not compensable. The use of an employer's car to travel to and from work is generally not compensable so long as the use of such vehicle is within the normal commuting area for the employer's business and the employee voluntarily agrees that such time is not compensable.

During the Work Day:

Travel time of an employee during the workday, such as travel to and from work sites and time spent traveling to a central location to receive instructions or pick up items must be counted as hours worked.

One day out-of-town travel:

If a non-exempt employee travels out of town for less than one day, the ***employee*** must be credited for all travel time, excluding travel time from home to public transportation (commuting time) and bona fide meal times.

Overnight travel:

Employees who travel overnight on business must be paid for time spent traveling (except for meal periods) during their normal working hours on their regular working days as well as during normal working hours on their non-working days, such as Saturdays, Sundays, and holidays. For instance, if an employee's working time is regularly scheduled 8 a.m. - 5 p.m. Monday through Friday, then any travel on Saturday and Sunday between those hours is also compensable.

Training Programs, Lectures and Meetings:

Time spent in training programs, lectures and meetings is not considered working time if all four of the following are true:

1. Attendance is outside of the employee regular working hours.
2. Attendance is voluntary.
3. The course, lecture, or meeting is not directly related to the employee's job, *and*
4. The employee does not perform any productive work during such attendance.

Alternative Work Schedule and Two-Week Compressed Schedule

When determined by the Office Director be consistent with agency needs, alternative working hours may be provided for agency employees. Flexible scheduling allows employees to maintain a work schedule other than normal agency hours. Regardless of any alternative scheduling, all offices must be staffed to maintain regular operations during normal hours of operation of 8:00 a.m. to 5:00 p.m., Monday thru Friday. All schedules must have a Monday start date.

Alternative scheduling does not alter the standard work week of 40 hours for full-time employees. Alternative schedules must be approved by the Office Director and submitted to Human Resources in advance if they vary from 8 hours a day Monday thru Friday so the time sheets created in SPAHRS are accurate. Abuse of flextime scheduling may result in loss of the privilege. Occasions may arise when flextime must be suspended temporarily because of departmental work load, vacations, holidays or other reasons. When this occurs, the department should give employees as much advance notice as possible.

When an employee uses leave while working an alternative schedule, the leave reported is the actual hours scheduled for that time. For example, if a non-exempt employee is scheduled to work 10 hours per day and uses leave for the entire day, the employee reports 10 hours of leave for that day. An employee may only receive credit for 8 hours of Holiday pay and will be required to take leave to make up the difference or be given hours on an alternate floating holiday, dependent on the scheduled hours.

Two-week compressed schedules are available only to exempt employees. This type of schedule provides a variation of the 40 hour work week where the employee works 80 hours over a two-week period. Two-week compressed schedules must be approved by the Office Director and submitted to Human Resources in advance so the time sheets created in SPAHRS are accurate.

Record Keeping

The Fair Labor Standards Act (FLSA) requires that records be kept on both non-exempt and exempt employees. Most of the required information, such as name, social security number, address, date of birth, sex, occupation, earnings and hours worked are maintained in SPAHRS by Human Resource and the Office of Budget & Accounting. However, Office Directors are required to keep the following records for non-exempt and exempt employees:

1. Employee work schedule.
2. Leave Documents for both non-exempt and exempt employees.
3. Non-exempt employee's records should include time worked and leave taken.

4. Time Sheets for non-exempt employees for three (3) years.

FLSA requires employers to maintain accurate records of hours worked each workday. Timesheets (electronic and paper) serve as the Department of Finance & Administration's authority to pay an employee. Employees are to provide an accurate accounting of hours worked and leave used during a pay period on a timesheet. An employee's timesheet must be verified and approved by the employee's supervisor or the supervisor's designee who should be aware of the employee's attendance.

Completed timesheets require the signatures of the employee and the supervisor. These signatures certify that, to the best of their knowledge, the information provided on the documents is true and correct. Any changes made to the timesheet by the supervisor must be acknowledged by the employee that the changes are valid and are a true representation of all the time worked. Electronic reporting of time by the employee and electronic approval by the supervisor using an electronic system approved for time and leave reporting are considered as valid signatures.