



Georgia Department of Education

Policies and Procedures

Policy Title:	<i>Fair Labor Standards Act, State Schools</i>		
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Purpose

To describe the rules, regulations, and guidelines governing time worked for State School employees covered by the Fair Labor Standards Act.

Applicability

This policy applies to all State School/DOE employees covered under the Fair Labor Standards Act. All employees of the Department of Education (DOE) are covered by the Wage and Hour provisions of the Federal Fair Labor Standards Act (FLSA) unless specifically exempted. FLSA **exempt** employees are **not covered** by the provisions of FLSA because their work assignments fall into one of the following categories:

1. Executive
2. Professional
3. Administrative

Designations of exempt or non-exempt status are made by the DOE Human Resource office based on criteria established by the Fair Labor Standards Act. Such designations are made on an individual basis and are based on the actual work responsibilities assigned to each employee. Any questions regarding the FLSA designations of employees should be directed to the DOE Human Resources office.

Definitions

Non-exempt employees: DOE employees who are covered by the Wage and Hour provisions of the FLSA.

Policy

The provisions of FLSA include guidance for establishing work periods, payment of minimum wages, hours of work, overtime compensation, and required record keeping. Employees who are covered by the Wage and Hour provisions of FLSA are considered FLSA **non-exempt** employees. All DOE supervisors are responsible for ensuring the FLSA non-exempt employees adhere to all of the provisions in this policy.

General Provisions

Work Periods

The standard FLSA work period is a fixed period of seven (7) consecutive calendar days. It does not need to coincide with the calendar week and may begin on any day and at any time. A work period must be established in writing for every employee (both exempt and non-exempt) and must be on file in an accessible location. The work period must define the time of day and day of the week when the employee work period begins and ends. (Example: Friday at 5:00 p.m. to the following Friday at 5:00 p.m.) Note: Exempt employees are required to have a defined work period in the event that they assume non-exempt duties for a period of time, which may make them eligible for FLSA overtime compensation. An established work period may be changed if the change is intended to be permanent and not for the purpose of avoiding the accrual of FLSA overtime. Employees in the same DOE organizational unit may have different work periods. Time worked includes all time non-exempt employees who are required to be on duty at prescribed work places, and all time during which non-exempt employees are permitted to work. Non-exempt employees must be compensated for all time which supervisors know or have reason to know is being worked, not simply the time which nonexempt employees have been required or asked to work. Supervisors shall not to ignore work which non-exempt employees do on their own time. Non-exempt employees are required to report all time worked. Non-exempt employees who work without authorization are subject to disciplinary action, up to and including separation. Note: **In order to avoid the potential for FLSA overtime, DOE employees who are FLSA non-exempt are not authorized to work for another State agency.**

Meal Periods

Although meal periods are not required by FLSA, it is the policy of DOE that meal periods be provided to employees unless there are specific work-related reasons for not allowing meal periods. Meal periods are not considered work time as long as non-exempt employees do not perform any work-related duties for an uninterrupted period of at least 30 minutes. Meal periods should be regularly scheduled based on non-exempt employees' work assignments and the needs of the DOE organizational unit. Non-exempt employees may *not* occupy their workstations during meal periods. Bona fide meal periods are not compensable work time. To be considered a bona fide meal period, an employee must be completely relieved of duty. The employee is not relieved from duty if he/she is required to perform any duties, whether active or inactive, while eating. A non-exempt employee is not required to leave the premises; however, may not observe mealtime at his/her workstation or other workstation where he/she might be required to perform any duties.

Break Periods

Short break periods are counted as time worked and are thus compensable.

Break periods are not required by FLSA; however, up to two 15-minute break periods per day may be authorized at the discretion of supervisors, and if work assignments permit. Supervisors may schedule break periods if determined appropriate within the DOE organizational unit. **Since break periods are work time, non-exempt employees are *not* authorized to lengthen a meal period, report late to work, or leave early by working through a break period.**

Meetings/Training

Time spent by non-exempt employees attending meetings, training and similar activities must be counted as time worked, unless *all* of the following criteria are met:

1. The attendance is outside of non-exempt employees' regular working hours;
2. The attendance is voluntary;
3. The meeting, training or similar activity is not directly related to non-exempt employees' positions; and
4. Non-exempt employees perform no work related to their positions while in attendance.

Sleep Time (*for employees of the residential State Schools*)

Sleep time cannot be excluded from work time of non-exempt employees who are on duty for less than 24 hours. Sleep time may be excluded from the work time of non-exempt employees who are on duty for 24 hours or more, provided that *all* of the following criteria are met.

1. There is either an expressed agreement (signed by the non-exempt employee) entered into prior to the effective date of the assignment, or an implied agreement between the DOE organizational unit and the non-exempt employee, as evidenced by written procedures or operational documents that were presented to the non-exempt employee prior to the date of assignment;
2. There is a bona fide, regularly scheduled sleep period of not more than eight (8) hours;
3. Adequate sleep facilities are provided by the employer;
4. The non-exempt employee usually has an opportunity for an uninterrupted night's sleep; and,
5. Interruptions are counted as time worked including the entire sleep period if the non-exempt employee does not have an opportunity for a reasonable night's sleep. A reasonable night's sleep is defined as at least five (5) hours sleep during the scheduled sleep period.

Residents

Non-exempt employees who reside on the premises of either of the residential State Schools for extended periods are *not* considered to be working all of the time they are on the premises. The assumption is that such non-exempt employees may engage in personal activities, including: eating, sleeping, entertaining, etc. As a general rule, non-exempt

employees who reside on the premises for 120 hours or more in a workweek fall within this rule. Five (5) consecutive days or nights residence might also qualify. Any reasonable agreement between the employers and non-exempt employees as to the amount of time worked is acceptable. These agreements be reasonably detailed and in writing.

Travel

Normal travel from home to work and return is not work time. This is true whether the non-exempt employee has a fixed workplace or works at different locations. Travel to work assignments at sites within reasonable commuting distance of the nonexempt employee's primary work site is considered in the home to work category and is *not* work time. If, however, a non-exempt employee is required to stop by the primary work site for instructions or to pick up materials, the travel from the primary work site to the work assignment *must* be counted as time worked. Travel between a non-exempt employee's normal work site and another place of assignment, or travel between one assignment and another during the workday, is considered time worked. Travel associated with a one-day assignment at a different location must be considered time worked to the extent that the travel exceeds the time spent in the non-exempt employee's normal travel between home and work. The FLSA does not require that travel time out-of-town for overnight stay as a *passenger* outside of normal work hours be counted as time worked. It is the policy of the DOE to count bona fide travel time of non-exempt employees which include the driver and all passengers outside normal work hours as work time. Note: **FLSA exempt employees are not entitled to any FLSA compensation for travel time either outside of, or in addition to, their normal hours of work.**

Management Responsibility

Supervisors are responsible for monitoring arrival and departure times of nonexempt employees to ensure accurate records are maintained and to ensure that no overtime worked. In the rare instances that overtime may be required to accomplish critical department projects, supervisors must ensure that any overtime incurred is minimal. Non-exempt employees are not allowed to occupy their workstations before their scheduled workday begins, during meal periods, and after their workday ends. Non-exempt employees are required to accurately sign in and out (re-cording time to the exact minute) when they arrive and leave their work areas. Nonexempt employees who fail to correctly record actual work time are subject to disciplinary action up to and including separation. Exempt employees generally do not complete time sheets to record work time. However, time sheets or sign-in sheets may be required by program management to monitor federal funding of positions or for other programmatic needs. Time worked by non-exempt employees should be reviewed prior to the end of the work period (when possible) to determine if overtime may occur. Non-exempt employees' work schedules may be adjusted within the

workweek to prevent overtime work. If a non-exempt employee arrives *after* the scheduled reporting time, the supervisor may allow the non-exempt employee to adjust the work schedule within the work period to make up the time if tardiness seldom occurs and the adjustment is otherwise determined appropriate. If *frequent* tardiness occurs, the non-exempt employee should not be allowed to make up the time. The nonexempt employee may be placed on unauthorized leave without pay, placed on an attendance plan, and disciplinary action may be taken. The DOE's position is that non-exempt employees should not work overtime unless true emergency situations arise that are critical to the DOE's business functions. **In the event of such unique or emergency situations that require overtime, non-exempt employees must receive prior approval to work overtime from his/her supervisor and from the Director of Human Resources.** In such cases the following provisions apply:

1. All overtime work requests must be approved in advance by the Supervisor and submitted in writing to the Director of Human Resources for approval/denial *prior* to any overtime being worked.
2. The Director of Human Resources may approve overtime for emergencies, unanticipated assignments, or for special, critical projects which cannot be completed during normal work hours. Overtime will not be granted for nonexempt employees when work should be completed during the workday.
3. Supervisors should closely monitor all overtime worked in these instances.
4. All overtime work must be accurately and promptly recorded by employee and maintained by the supervisor.
5. A method for monitoring all overtime worked should be put in place in every DOE organizational unit.

FLSA Compensatory Time

If overtime occurs (non-exempt employee actually *works* more than 40 hours in a work period) the non-exempt employee is to receive **time and a half FLSA compensatory time** for the amount of overtime worked. Note: FLSA compensatory time is not granted to non-exempt employees who may have been in pay status for more than 40 hours during a work period due to a holiday or use of accrued leave, but who did not actually work more than 40 hours. **FLSA exempt employees are *not* entitled to FLSA compensatory time for time worked over 40 hours in a work period.** The actual amount of FLSA compensatory time earned by non-exempt employees (i.e., not rounded off) should be reported to the official leave recording unit each work period via a time sheet. The accrual and usage of FLSA compensatory time must be reported and requested in the same manner that other leave is accrued and used. Non-exempt employees must be permitted to use FLSA compensatory time within a reasonable period after making the request if the granting of such time off does not unduly

disrupt the operations of the DOE organizational unit. Supervisors must require non-exempt employees to take FLSA compensatory time in lieu of annual leave. Non-exempt employees may request FLSA compensatory time in lieu of sick leave or personal leave. FLSA compensatory time cannot be transferred between State agencies or different DOE organizational units. Transfer of FLSA compensatory time is allowed within the same organizational unit within DOE. Payment for FLSA compensatory time must be made by the losing DOE organizational unit at the time a non-exempt employee transfers to another organizational unit within DOE or to another state agency.

Payment of approved FLSA overtime

Monetary payments of overtime must be approved in advance by the Office of Planning and Budget and the DOE Budget Services office, and the DOE Director of Human Resources. Such approval is extremely rare and usually occurs during large-scale mission-critical projects for the State of Georgia (Example: implementation of statewide financial and HRMS automated systems). Non-exempt employees may accrue up to a maximum of 240 hours of FLSA compensatory time (160 overtime hours worked \times 12 = 240 hours of compensatory time. Non-exempt employees must receive overtime payment for FLSA compensatory time accrued in excess of the maximum described above. As a rule, such accrual should not occur. Non-exempt employees must be paid for accrued and unused FLSA compensatory time at the higher of the following rates:

1. The average regular rate received by the non-exempt employee during the last three (3) years of employment; or
2. The final regular rate received by the non-exempt employee.
3. Monetary payment of overtime to non-exempt employees will be made only in unique or critical circumstances and must have prior approval from the Office of Planning and Budget, DOE Budget Services and the DOE Human Resources office.

FLSA Records

All FLSA records must be kept for at least three (3) years by the DOE organizational unit unless otherwise directed. These records include, but are not limited to:

1. Sleep time agreements for employees of the State Schools, if applicable;
2. Work time agreements for residents of the State Schools, if applicable;
3. Written records of employees' work periods;
4. Records of each non-exempt employee's daily and weekly time worked signed by the employee and supervisor;
5. The amount of FLSA compensatory time accrued by each non-exempt employee during each work period;

6. The amount of FLSA compensatory time used in each work period by each non-exempt employee; and,
7. The amount paid for FLSA compensatory time and the basis of payment.

**Authority and/or
Cross-Reference**

- Fair Labor Standards Act (29 U.S.C. Chapter 8, '201 *et al.*)
- Federal Department of Labor Regulation (29 C.F.R. Part 516 *et al.*)
- DOE *General Leave (Annual, Personal, and Sick)* Policy (B-1001)
- DOE *Work Schedules* Policy (HR-1116)
- DOE *Fair Labor Standards Act* Policy (HR-1120)