

State Human Resources Regulations

19-707 HOURS OF WORK AND OVERTIME

SCOPE AND PURPOSE

This Regulation governs the hours of work and overtime policies for employees.

19-707.01 HOURS OF WORK

- A. No agency shall have less than a 37.5-hour workweek. Generally, the core hours that an agency shall remain open for business are 8:30 a.m. to 5:00 p.m., Monday through Friday.
- B. The minimum full-time workweek for employees of agencies is 37.5 hours. The agency may vary an employee's work schedule through the use of alternative scheduling strategies including telecommuting to meet the needs and service delivery requirements of the agency.
- C. The agency may require an employee to work additional hours when responsibilities of the agency cannot be accomplished in the normal work hours observed by the agency.
- D. Each agency is required to keep an accurate record of all employee's scheduled hours of work and leave taken. Leave shall be recorded in the appropriate categories and shown as either leave with or without pay. The agency head has the ultimate responsibility for the accuracy and proper maintenance of hours of work and leave records.

19-707.02 OVERTIME - COMPENSATORY TIME

- A. The Office of Human Resources (OHR) develops an overtime model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's overtime policy.
- B. Each agency shall develop an overtime policy and establish procedures that will ensure compliance with federal and state laws, including the Fair Labor Standards Act (FLSA).
- C. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purposes of applying FLSA.
- D. For overtime purposes the two categories of employees are: (a) nonexempt (overtime provisions of FLSA do apply) and (b) exempt (overtime provisions of FLSA do not apply). The exempt or nonexempt status of any employee must be determined by the agency based on the provisions of FLSA. It is the responsibility of the agency head or his designee to determine whether an exemption is applicable to a particular employee.
- E. Workweek is seven consecutive 24-hour periods, i.e., 168 consecutive hours designated by the employing agency.

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Exception - In the case of law enforcement personnel or fire protection and emergency medical personnel, these categories of employees have work schedules up to 28 consecutive 24-hour periods, i.e., 672 consecutive hours designated by the employing agency.

- F. Hours worked are all hours that an employee is permitted to work for the employing agency. Hours worked include time during which an employee is necessarily required to be on the employing agency's premises, on duty, or at a prescribed work place. Hours worked do not include leave with or without pay or holidays when an employee does not actually work.
- G. Overtime is actual hours worked in excess of 40 hours in a given seven consecutive day period as determined by the employing agency. The Fair Labor Standards Act contains special provisions for determining when overtime is earned by employees in certain job categories. These categories include:
 - 1. Fire protection and emergency medical personnel;
 - 2. Law enforcement (including security personnel in correctional institutions);
 - 3. Hospitals or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or the disabled that reside on the premises; and
 - 4. Employees who are compensated for overtime using the fluctuating workweek method of payment for overtime as defined by FLSA which must be approved by OHR prior to implementation.
- H. Generally a nonexempt employee should not incur overtime; however, overtime may be permitted when authorized by the agency.
- I. Compensatory time is an acceptable alternative to overtime compensation for employees.
 - 1. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time, and exempt employees shall not be paid for unused compensatory time.
 - 2. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time at a rate of compensation not less than the higher of:
 - a. The average regular rate received by such employee during the last three years of the employee's employment, or
 - b. The final regular rate received by such employee.
- J. Nonexempt Employee Procedures

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1. Payment for Overtime

Nonexempt employees shall either be paid or given compensatory time for hours worked in excess of 40 hours in a given work period of seven consecutive days. For hours worked in excess of 40 in an established workweek of seven consecutive days, payment for overtime or the accrual of compensatory time shall be at the rate of time and one-half the employee's regular rate, computed on the basis of a 40-hour workweek. *(Refer to Exceptions in Section 19-707.02 G.)*

2. Compensatory Time

- a. A nonexempt employee engaged in public safety work, emergency response work, or seasonal work may not accumulate more than 480 hours of compensatory time. Any employee who has accumulated 480 hours of compensatory time shall be paid overtime for additional hours of work.
- b. A nonexempt employee engaged in work other than public safety work, emergency response work, or seasonal work, may not accumulate more than 240 hours of compensatory time. Any employee who has accumulated 240 hours of compensatory time shall be paid overtime for additional hours of work.

3. Recordkeeping for Nonexempt Employees

Each agency must maintain the following information for nonexempt employees.

- a. Name;
- b. Home address;
- c. Date of birth if under 19 years of age;
- d. Gender and occupation;
- e. Employee workweek, including time of day and day of week on which the employee's workweek begins;
- f. Regular hourly rate of pay for any week when overtime is worked and overtime pay is due;
- g. Hours worked each workday and total hours worked each week;
- h. Total daily or weekly straight-time wages for all hours worked;
- i. Total overtime excess compensation for the workweek;
- j. Total additions or deductions from wages each pay period;

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- k. Total wages paid each pay period;
- l. Date of payment and pay period covered;
- m. The number of hours of compensatory time earned each workweek, or other applicable work period, by each employee at the rate of 1 1/2 hours for each overtime hour worked;
- n. The number of hours of such compensatory time used each workweek or other applicable work period by each employee; and
- o. The number of hours of compensatory time compensated in cash, the total amount paid, and the date of such payment.

K. Exempt Employee Procedures

1. No Payment for Overtime

Exempt employees shall not be paid overtime.

2. Compensatory Time

If allowed by an agency's overtime policy, exempt employees may receive compensatory time for hours worked in excess of 40 in the workweek. If granted, compensatory time must not be at a rate greater than one hour of compensatory time for each hour worked in excess of 40 in the workweek.

L. Employment at More Than One State Agency

When a nonexempt employee is employed at more than one State agency, each employing agency shall calculate separately the hours worked by the employee. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purpose of applying FLSA; therefore, the agencies where the individual is employed should jointly determine whether such a nonexempt employee is owed any overtime compensation during a workweek. *(For information on dual employment, refer to Section 19-713.)*

M. Volunteers

Time spent as a volunteer is not included in hours worked. An employee may volunteer services for an agency or a political subdivision of the State, if a) the individual does not receive compensation, paid expenses, benefits, or a nominal fee for services for which the individual volunteered, and b) such services are not the same type of services which the individual is employed to perform for such public agency. An employee of a public agency which is a state, political subdivision of a state, or an interstate governmental

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agency may volunteer services for any other state, political subdivision, or interstate governmental agency including a state, political subdivision or interstate governmental agency with which the employing agency has a mutual aid agreement.