



OVERTIME / COMPENSATORY POLICY

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

The Fair Labor Standards Act (FLSA) establishes minimum wage rates, maximum work hours, overtime pay requirements, equal pay standards, and child labor restrictions for employees subject to its provisions.

I. POLICY

All provisions in this policy are governed by principles established in the FLSA. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purposes of applying FLSA.

II. NON-EXEMPT & EXEMPT STATUS UNDER THE FAIR LABOR STANDARDS ACT

Employees are considered “exempt” if their job duties and their salary meet certain thresholds within the FLSA. These exempt employees are not subject to the FLSA minimum wage, overtime, or record-keeping requirements. As such, exempt employees are expected to work as many hours as required to perform the duties of the position. The exempt status of an employee in a bona fide executive, administrative, professional, or computer employee position shall be determined by the South Carolina Department of Agriculture (SCDA) Human Resources with input from the appropriate division management.

Non-exempt employees are covered by, or subject to, the minimum wage, overtime, and record-keeping requirements of FLSA. All employees who are not considered exempt from the FLSA will be considered non-exempt.

III. OVERTIME/COMPENSATORY TIME

Overtime is all hours worked in excess of 40 in a seven (7) consecutive day work period, which SCDA defines as Sunday through Saturday. A non-exempt employee shall be paid no less than one and one-half (1 ½) times his/her regular rate of pay for all hours worked over 40 in a workweek or granted compensatory time at a rate of one and one-half (1 1/2) hours for each hour of overtime worked. Non-exempt employees, who have a scheduled workweek of 37.5 hours, shall not receive additional compensation or compensatory time for hours worked between 37.5 and 40.0 hours per workweek.

The requirements that overtime pay must be paid or compensatory time granted to non-exempt employees after 40 hours of work in a workweek shall not be waived by agreement between the supervisor and the employee.

Non-exempt employees may accumulate up to 240 hours of compensatory time. Should a non-exempt employee with an accumulation of 240 hours of compensatory time, work additional overtime, the overtime must be paid in the employee’s next regular paycheck.

IV. OVERTIME USAGE

The use of overtime should be an exception to the regular work schedule in any unit. An employee should only be required to work overtime on an occasional basis to meet a sudden increase in the workload, to overcome productive time lost due to some mechanical failure, or to meet the demands of a crisis situation.

When any unit and/or individual is found to be consistently charging overtime, the functions of that unit and/or individual should be reviewed by appropriate management. Every attempt should be made to avoid the repetitive and chronic use of overtime.

It shall be the responsibility of each manager to determine that the provisions of this policy are administered in the best interest of SCDA. Each manager or designee is responsible for the prior approval of hours worked that will result in overtime. However, unauthorized overtime must be compensated. Unauthorized overtime may result in disciplinary actions for managers and/or employees.

V. HOURS WORKED

Hours worked include all time that the employee is required to be on duty or at the prescribed workplace and all time during which the employee is permitted to work. The hours worked include any bona fide work which the employee performs on or away from the premises if the supervisor knows or has reason to believe that the work is being performed. Time spent in leave status is not considered hours worked.

Under warranted circumstances, a non-exempt employee may be allowed to work in excess of the normal workday and may be given time off during the same workweek at the rate of an hour for an hour to avoid working over 40 hours in a workweek. This adjustment is not allowed for hours worked between 37.5 and 40.0 hours during any workweek. This type of work rescheduling precludes working over 40.0 hours in a workweek and eliminates the need for overtime payment.

VI. GENERAL PROVISIONS ON HOURS WORKED

On-call time is not regarded as work time unless an employee is required to remain at the employer's premises or prescribed workplace or is so restricted that the employee cannot use the time effectively for his or her own purposes. If the employee is not confined to his or her home or any particular place but is only required to leave work where he or she can be reached, then the hours are not considered working hours.

A bona fide meal period of thirty (30) minutes or more which occurs during the scheduled workday is not hours worked if the employee is completely relieved from duty for the purpose of eating a meal. For SCDA, the meal period (lunch period) is one (1) hour each workday. Division Assistant Commissioners have the authority to allow organizational units within their purview to scale back to thirty (30) minutes when it makes business sense to do so or it is beneficial to employees, such as with field employees.

Breaks of short duration must be counted as hours worked. One morning and one afternoon break of no more than fifteen (15) minutes each is permitted. Breaks shall not be used to allow an employee to come in late, to leave early, or to extend the lunch period.

Travel time for non-exempt employees may be hours worked under some conditions. Ordinary home-to-work travel or work-to-home travel is not working time. All time spent traveling on one-day assignments is considered time worked regardless of the time of day or day of the week.

Travel away from home involving an overnight stay for non-exempt employees is considered time worked when it occurs during the employee's normal working hours. This provision is applicable not only on regular working days, but also during the corresponding hours of non-working days.

When a non-exempt employee by reason of official responsibilities is required to attend lectures, meetings, training programs, etc., such time shall be considered work time.

Time off for holidays, paid leave, and compensatory time are not counted as hours worked when calculating overtime.

VII. SCDA'S WORKWEEK

The normal workweek for SCDA shall be 37.5 hours. However, no employee shall receive additional compensation or compensatory time for hours worked between 37.5 and 40.0 hours per workweek. For record-keeping purposes, the workweek begins at 12:00 am on Sunday and ends at 11:59 pm on Saturday. Any employee may be required to work up to forty (40) hours per workweek without additional compensation.

VIII. COMPENSATION

The regular rate of pay for purposes of calculating overtime due includes all remuneration for employment paid to an employee to include base pay, and all compensation not included in base pay as outlined in the Division of State Human Resources Regulations, with the exception of discretionary bonuses. Compensation of all employees is based on forty (40) hours per week or 2080 hours per year. Non-exempt employees must not be paid less than minimum wage.

IX. IMPACT OF STATUS CHANGE

If a non-exempt employee accepts a position that is considered exempt either within the employee's own agency or with a separate state agency, compensatory time must be paid prior to the employee starting in the exempt position.

If a non-exempt employee separates from employment or moves to another state agency, any accrued compensatory time must be paid out prior to the separation or movement. Compensatory time must be paid at a rate of compensation not less than either the average regular rate received by the employee during the last three years of employment, or the final regular rate received by the employee, whichever is higher.

X. HOLIDAYS

An employee who is required to work on a legal holiday shall be given holiday compensatory time in accordance with Section 19-708.04 of the Division of State Human Resources Regulations. Time worked on a legal holiday shall be used in computing the total hours worked. All non-exempt employees who do not take the holiday compensatory time earned for working on a holiday within a 90-day period shall be compensated for the holiday by the employing agency at the straight hourly pay rate of the employee. An agency head or designee may extend the 90-day period for an additional 90 days because of limited staffing. All non-exempt employees will be paid for unused holiday compensatory time upon separation of employment from State government, movement to a position in another State agency (whether the new position is exempt or non-exempt), or upon an employee starting in an exempt position in the current agency. Exempt employees shall not be paid for unused holiday compensatory time under any circumstances.

XI. EXEMPT EMPLOYEES AND COMPENSATORY TIME

Exempt employees may receive compensatory time off for hours worked, for time spent traveling, or for attendance at lectures, meetings, training programs, etc., in excess of the normal workweek (40 hours per week). Under no circumstances shall an exempt employee accumulate more compensatory time than the FLSA allows for a non-exempt employee (See Overtime/Compensatory Time section of policy above). If granted, the compensatory time must not be at a rate greater than one (1) hour of compensatory time for each hour worked in excess of 40.0 in the official workweek and may be at a lesser rate. Exempt employees must not be paid for overtime.

XII. TEMPORARY EMPLOYEES

The hourly rate is the “regular rate” for temporary employees. This rate is calculated by dividing the annual salary by 2080 hours. Temporary employees shall be compensated for all hours worked. All temporary employees must be designated as non-exempt.