

Fair Labor Standards Act (FLSA)

What is the Fair Labor Standards Act?

- ❑ The Fair Labor Standards Act (FLSA) is the federal law that sets standards for child labor, minimum wage, overtime pay and equal pay (added under the 1963 Equal Pay Act) for men and women performing the same jobs.
- ❑ By requiring overtime, the FLSA created a monetary penalty for employers who did not spread their existing work among a greater number of employees.
- ❑ Under the FLSA, all employees are considered non-exempt (meaning not exempt from coverage) unless the employee's position meets specific exemption criteria or unless the regulations specifically allow an exemption, and the employer has opted to use this exemption.

Defining Exempt and Non-Exempt

- ▶ Exempt Employees - Employees who meet one (1) of the FLSA exemption tests and who are paid on a fixed salary basis and not entitled to overtime.
- ▶ Non-Exempt Employees - Employees who do not meet any one of the FLSA exemption tests and are paid on an hourly basis and covered by wage and hour laws regarding minimum wage, overtime pay and hours worked.

Overtime Pay Requirements

- ❑ Per the HUSW contract: Compensable absences shall be counted as hours worked solely for the purpose of computing entitlement to overtime. No other time, except actual hours worked, shall be counted as time worked for the purpose of computing entitlement to overtime.
- ❑ The FLSA does not require overtime pay for work on Saturdays, Sundays or holidays, simply for working on those days; an employee must work more than forty (40) hours during their established 7-day workweek to be entitled to overtime pay under the FLSA.
- ❑ Similarly, the FLSA does not require overtime pay for work on nights or weekends, simply for working at those times.
- ❑ Employers must pay non-exempt employee's wages equal to one-and-one-half (1 ½) times their regular hourly rate of pay for all hours worked in excess of forty (40) in a single workweek.
- ❑ With the agreement of employees, employers are allowed to provide nonexempt employees with compensatory time off at a rate of at least one and one-half (1 ½) hours of paid time off for each hour of overtime work instead of overtime pay.
- ❑ It is the employee's right to request payment in lieu of compensatory time. The superintendent must approve this request prior to allowing overtime hours to be worked.
- ❑ Overtime must be authorized in advance by an employee's supervisor. If an employee works overtime without authorization, the employee must still be paid.
- ❑ **Unauthorized overtime is a disciplinary issue, not a compensation one.** Repeated disciplines can lead to termination.

Compensable Time - other than time spent on usual work activities

Travel Time

- Whether travel time is compensable time depends on the kind of travel involved.
- Home-to-work travel is not work time and not compensable.
- Time spent in travel as part of the employee's principal activity, such as travel from one job site to another during the workday, is work time and must be paid.
- When the non-exempt employee travels on a one-day assignment to another city, the time spent traveling is work time and must be paid.
- Travel that keeps the employee away from home overnight is work time when it cuts across the employee's workday. However, time spent traveling to an airport terminal or train station is not treated as hours worked. By contrast, all the time spent waiting at the terminal until arrival at the destination is compensable.

Meetings and Training

- ▶ Time spent attending lectures, meetings and training programs is counted as hours worked unless all of the following conditions are met:
 - ▶ The meetings are held outside regular working hours;
 - ▶ And attendance is voluntary. (Attendance is not voluntary if the employee is led to believe that non-attendance would adversely affect employment.)
 - ▶ And the course, lecture or meeting is not directly related to the employee's job. (Training is directly related to an employee's job if it is designed to make the employee more effective in the present job, not if it teaches a different job.)
 - ▶ And the employee does no productive work during the meeting or training.

Rest and Meal Periods

The FLSA does not require rest or meal periods. However, HUSW and HCTA contracts should be consulted for specifics associated with each group of employees.

On-Call Duty

- Whether on-call or waiting time is to be treated as working time depends on whether "the time is spent predominantly for the employer's benefit or for the employee's."
- An employee who is required to remain on-call on the employer's premises is working while "on-call" and the time is compensable.
- An employee who is required to remain on-call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on-call and the time is not compensable.
- Additional constraints on the employee's freedom could require this time to be compensated.

Work Schedules

- ▶ HUSW and HCTA contracts contain language that addresses work hours for their bargaining unit members.

These contracts should be followed as they address specific FLSA concerns.

- ▶ FLSA exempt employees may be subject to structured work schedules as set by their supervisors and are required to receive prior approval to be absent from or to leave work during work hours.
- ▶ All employees should accurately document hours worked on Time and Attendance Records.

Comp Time Bank

- ▶ A Comp Time Bank will be used to document overtime hours worked by a non-exempt employee.
- ▶ Hours worked in excess of forty (40) in a workweek will be logged at a rate of one and one-half (1 ½) hours for every hour of overtime worked.
- ▶ Employees wishing to use accrued comp time will complete a Leave of Absence Form.
- ▶ Comp Time Bank balances carry forward each year and follow the employee if there is a change in district work location.
- ▶ A maximum of 240 hours of comp time may be accrued before payment must be given.

Additional Information

- ▶ For more information visit the U.S. Department of Labor's website at:
<http://www.dol.gov/whd/reg-library.htm>
- ▶ Click on the link to view/download the FLSA Compliance Manual