

## **1031.0 FAIR LABOR STANDARDS ACT (FLSA)**

This policy provides procedures regarding the administration of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, for employees of the Arkansas Department of Human Services. The policy applies to all employees who occupy a position in accordance with the Uniform Classification and Compensation Act, codified at Ark. Code Ann. §§ 21-5-201 et seq. Exceptions are identified in Item II.B. below.

### **1031.1 Substantive Rules**

#### **1031.1.1 FLSA Compensatory Time**

FLSA Compensatory Time is awarded to employees classified as non-exempt under the Fair Labor Standards Act (FLSA) when the employee physically works in excess of 40 hours in the workweek. This time is computed at one and one-half times the excess time the employee worked. No category of leave is computed in arriving at the 40 hours.

#### **1031.1.2 Employee Classifications**

All exempt and non-exempt employee classifications have been identified by the State Office of Personnel Management and are listed in Appendix A of the Implementation Guide that is a part of this policy.

- A. Exempt employees, with Department of Finance and Administration Office of Personnel Management approval, may earn FLSA Compensatory Time.
- B. Non-Exempt employees must be compensated at the rate of time and one-half for hours worked in excess of 40 hours per week or in excess of 8 hours a day when Section II.C.2. applies.
- C. The following links to the U.S. Department of Labor Employment Standards Administration explain the exemptions from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, and professional employees.
  1. Overview  
[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a\\_overview.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a_overview.htm)
  2. Executive Employees  
[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17b\\_executive.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17b_executive.htm)
  3. Administrative Employees  
[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17c\\_administrative.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17c_administrative.htm)
  4. Professional Employees  
[http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17d\\_professional.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/fs17d_professional.htm)

### 1031.1.3 Workweek

The following options are available to identify the workweek:

- A. Regular Workweek - A workweek is a regularly recurring period of 168 consecutive hours (7 days x 24 hours). The workweek need not coincide with the calendar week. It may begin any day of the week and any hour of the day, but it must, in each case, be established in advance. The workweek may be changed, but only if the change is intended to be permanent and is not made to evade the requirements of the law.
- B. Hospitals - Hospitals and other institutions primarily engaged in the care of the sick, the aged, or the mentally ill may use a work period of 14 consecutive days in computing overtime pay, provided there is written agreement in advance with the employees concerned. If a 14 consecutive day work period is elected, overtime of at least one and one-half times the employee's regular rate of pay is due after 8 hours in a workday and 80 hours in a work period. This applies only to individuals identified as non-exempt under the FLSA.

Divisions will secure prior approval of those classifications to be covered under this option from the Deputy Director of the Division of Management Services. Item 1 above or 2 below will cover all other employees not so identified.

- C. Fire Protection or Law Enforcement Activities - Security personnel are specifically included in this group. Working hours in this area are heavily influenced by the emergency and "on-call" nature of the job and information to determine the work period is included in the Implementation Guide.

## 1031.2 OVERTIME POLICY

1031.2.1 To control the costs of salaries, wages and related expenditures and in keeping with the spirit of Ark. Code Ann. § 19-4-1612, Overtime Pay, it is DHS policy that overtime pay for employees is the least desirable method of effective compensation for overtime work. Division directors have the responsibility to control unauthorized overtime and to determine that the provision of overtime pay is administered in the best interest of the State of Arkansas.

1031.2.2 To pay overtime pay, Divisions and Offices shall have an overtime appropriation approved by the State Fiscal Officer and appropriate funding within the agency's existing budget. If funding does not exist within the agency's budget, compensation in the form of overtime pay will not be awarded to non-exempt employees. DHS may either not permit non-exempt employees to work hours in excess of 40 hours during any workweek or award FLSA Compensatory Time off in lieu of overtime pay.

### 1031.3 HOURS WORKED

It is management's responsibility to assure that non-exempt employees do not engage in any work activity that is outside their regularly scheduled work hours without supervisory approval. It is the employee's responsibility to obtain prior written supervisory permission before engaging in work outside their regularly scheduled work hours.

1031.3.1 Waiting Time - All time spent by employees in waiting while on duty must be counted as hours worked. Under the FLSA regulations, waiting by an employee who has been relieved from duty need not be counted as hours worked, if:

- A. The employee is completely relieved from duty and allowed to leave the job; or
- B. The employee is relieved until a definite specified time; and
- C. The relief period is long enough for the employee to use the time as he or she sees fit.

1031.3.2 On Call Time - Whether or not the time an employee is on call need be counted as compensable working time depends upon the employee's freedom while on call. If employees must remain on the employer's premises or so near that they cannot use the time effectively for personal pursuits, the time is compensable. If the employees can come and go freely, even though they must leave a telephone number where they can be reached, the time can be excluded from hours worked.

1031.3.3 Rest Periods (Break Time) - Regulations do not mandate that employers give rest periods, but if rest periods are provided, they must be counted as hours worked if they last 20 minutes or less.

1031.3.4 In-Residence Workers - When individuals are engaged to reside on the work premises, a written hours-of-work agreement must be reached between the employee and the employer in accordance with the provisions of the FLSA.

1031.3.5 Meal Periods - A bona fide meal period is one in which the employee is completely relieved of all duties, free to leave his or her duty post and is at least 30 minutes in duration. If the above conditions are met, this time can be excluded from compensable working time and not considered in determining the length of workday. Whatever meal period policy was practical prior to the effective date of this policy may be continued.

1031.3.6 Training Programs, Lectures, and Meetings - Training programs, lectures and meetings will not be considered as working time if the program, lecture or meeting is not directly related to an employee's job and:

- A. Attendance occurs outside the employee's regular working hours; and

- B. Attendance is voluntary; and
- C. The employee does no productive work while attending.

1031.3.7 Travel Time - As a rule, home-to-work (regular assigned work station) travel time is not compensable. Other travel time that is work related may be compensable depending on the circumstances. (See Implementation Guide for specifics)

#### **1031.4 ACCRUAL**

The maximum FLSA Compensatory Time that may be accrued by any affected employee shall be 480 hours for those engaged in a public safety, emergency response or seasonal activity, and 240 hours for all other employees. An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation in cash for any additional overtime hours of work. When a non-exempt employee's FLSA Compensatory Time reaches 180 hours, the supervisor will notify the division director or designee of this situation and a plan for advance scheduling of usage for the time will be developed.

#### **1031.5 USAGE**

1031.5.1 FLSA Compensatory Time earned may be used in lieu of sick or annual leave.

1031.5.2 Employees with both earned FLSA Compensatory Time and earned Annual Leave may be given the option to select the type of leave they want to use. The employee may be required to propose a plan for using the two leaves. The Supervisor, however, will have the final authority to determine if the plan will interfere with the workflow, and may direct the employee to use FLSA Compensatory Time when needed.

1031.5.3 Nothing herein prevents the employee from requesting FLSA Compensatory Time immediately after it is earned if to do so would not unduly disrupt the operations of the employing public agency.

1031.5.4 Time may not be used in less than fifteen-minute increments.

#### **1031.6 TERMINATION**

At the time of termination or transfer, payment of Compensatory Time will be in accordance with Office of Personnel Management policy.

#### **1031.7 RIGHTS AND PRIVILEGES**

The Wage and Hour Division of the U.S. Department of Labor may seek to enforce unfair treatment or violation of this policy.

## **IMPLEMENTATION GUIDE FOR MANAGERS FAIR LABOR STANDARDS ACT (FLSA)**

The following guidelines have been prepared to assist agencies and institutions of the State of Arkansas in defining responsibility under the Fair Labor Standards Act (FLSA). These guidelines are intended to provide information necessary to effectively compensate and administer an FLSA Compensatory Time system including recordkeeping requirements as detailed by FLSA and the requirements of the State of Arkansas as outlined in law.

While this document provides a detailed explanation of the requirements of law, situations may arise where further clarification may be required. In any event, the provisions of the Fair Labor Standards Act as amended and the interpretative bulletins of the U.S. Department of Labor - Wage and Hour Division and the opinion of its staff remain the final authority where questions of application may arise. Specific questions not covered herein should be referred through the Personnel Office to the Division of Management Services.

### **I. EMPLOYEE CLASSIFICATIONS**

The determination of exempt and non-exempt employee classifications as applied to Fair Labor Standards Act (FLSA) has been set forth by the Office of Personnel Management and has been included in this policy under Appendix A.

### **II. ENFORCEMENT**

Both the Secretary of Labor and an aggrieved employee have the right to sue in State and Federal courts for recovery of wages and court costs. There is also the possibility of criminal penalty if the law is knowingly violated. It is in management's own interest, as well as sound management practice, to ensure compliance with the provisions of the law.

The United States Department of Labor, Wage and Hour Division has issued a large amount of explanatory and interpretative material to clarify the law. Most situations on the job are covered in a basic set of five pamphlets listed below. They may be obtained at no charge from the Little Rock, Area Office of the Wage and Hour Division, Employment Standards Administration, Federal Office Building, 700 West Capitol Ave., Little Rock, Arkansas 72201.

1. The Fair Labor Standards Act of 1938, as amended, WH Publication 1318, 30 pages.
2. Interpretative Bulletin, Part 785: Hours Worked Under the Fair Labor Standards Act of 1938, as amended, WH Publication 1312, 13 pages.
3. Regulations, Part 778: Interpretative Bulletin on Overtime Compensation, WH Publication 1262, 62 pages.

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4. Regulations, Part 541: Defining the Terms "Executive," "Administrative," "Professional," and "Outside Salesman," WH Publication 1281, 29 pages.
5. Records to be Kept by Employers Under the Fair Labor Standards Act of 1938, as amended, WH Publication 1261, 14 pages.

**III. RECORDKEEPING**

Records must be kept on all employees regardless of employee classification status. Employers are required to make and preserve employment records containing the following information and data:

1. Name in full, Social Security Number, and other identifying number such as position or item number
2. Home address
3. Birth date, if under age 19
4. Sex
5. Occupation (classification) in which employed
6. Day and Hour when employee's work week begins
7. Regular hourly rate for any week when overtime is worked, and nature and amount of each payment excluded from the regular rate
8. Hours worked each workday and total hours worked each workweek
9. Total daily or weekly straight-time earnings or wages due for hours worked
10. Total overtime excess compensation for the workweek, that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during that workweek
11. Total additions to or deductions from wages paid each pay period
12. Total wages paid each pay period
13. Date of payment and the pay period covered by payment

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- 14.** Leave records must be kept in a manner which reflects the type of leave used and earned; e.g. sick, annual, holiday, educational, military, compensatory time, leave without pay, etc.

The regulations require no particular order or form of records to be kept. Records that contain the data in items 1 through 14 may be in the form of payroll records or any others used currently. Those records containing items 1-14 must be preserved and kept available for inspection and transcription by the Wage and Hour Division for a period of at least three years. In addition, the employer is required to keep posted in conspicuous places notices that are applicable under the Act (Publication 1261) and (Wage Hour Publication 1088 - Attention Employers; General FLSA Poster).

**IV. TIMEKEEPING**

The work for which non-exempt employees must be paid at least the minimum wage and which must be counted in computing liability for weekly overtime pay includes all the time an employee works or is required or permitted to be on duty and cannot use the time for his/her own purposes.

**V. MEALS**

A bona fide meal period is a span of at least 30 consecutive minutes (never less) during which an employee is completely relieved of duty and free to use the time for his or her own purposes. It is not counted as hours worked or paid time. Any so-called "meal period" of less than 30 consecutive minutes must be paid as hours worked.

**VI. TRAVEL TIME**

Whether travel time is compensable depends entirely on the kind of travel involved.

The following general guidelines apply in determining whether an employee's travel time is compensable:

- A. Home-to-work Travel** - As a general rule, home-to-work travel is not compensable, even if an employee must travel from a town to an outlying site to get to the employer's premises. Generally, an employee is not at work until he or she reaches the work site. But if an employee is required to report to a meeting place where he or she is to pick up materials, equipment, or other employees, or to receive instructions, compensable time starts at the time of the meeting.
- B. Travel During the Workday** - Traveling by an employee from one job site to another job site during the workday is compensable work. Also, traveling from an outlying job at the end of the scheduled workday to the employer's premises is compensable.

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Travel time is compensable when an employee is called back to work outside his/her normally scheduled work hours.

- C. **Out-of-Town-Travel** - An employee who is sent out of town for one day need not be paid for time spent in traveling from his or her home to the local railroad station, bus depot, or airplane terminal, but he or she must be paid for all other travel time (except any time spent in eating while traveling). Employees who drive overnight are considered working all the time they are driving.

Where employees travel overnight on business (i.e., for more than one day), they must be paid for time spent in traveling (except for meal periods) during their normal working hours on their non-working days, such as Saturday, Sunday, and holidays, as well as on their regular working days. Travel time as a passenger on an airplane, train, boat, bus, or automobile outside or regular working hours is not considered worktime.

- D. **Transportation Furnished by the Employer** - An employee who uses a government car is working while driving on business, but not while going to and from home. An employee who chauffeurs other employees to work at the direction of his or her employer, however, is entitled to compensation.

**VII. SLEEP TIME**

- A. **Duty of Less Than 24 Hours** - Under certain conditions an employee is considered to be working even though some of his or her time is spent in sleeping or in certain other activities. Thus, an employee who is required to be on duty for less than 24 hours is working even though the employee is permitted to sleep or engage in other personal activities when not busy. It makes no difference if the employee is furnished facilities for sleeping. The employee's time is given to the employer. The employee is required to be on duty and the time is work time.
- B. **Duty of 24 Hours or More** - Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period is of more than eight hours, only eight hours will be credited. If the sleeping period is interrupted by call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the Department has adopted the rule that if the employee cannot get at least five hours' sleep during the scheduled period the entire time is working time.



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- C. **Employees Residing on Employer's Premises or Working at Home** - An employee who resides on the employer's premises on a permanent basis or for extended periods of time is not considered as working all the time the employee is on the premises. Ordinarily the employee may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining and other periods of complete freedom from all duties when he or she may leave the premises for purposes of their own. It is, of course difficult to determine the exact hours worked under these circumstances, and any reasonable written agreement of the parties that takes into consideration all the pertinent facts will be accepted.

**VIII. WAITING TIME**

Whether any waiting time is compensable under the FLSA requires close scrutiny of all the facts. The question to be answered in all cases is whether the employee was engaged to wait (waiting is part of the job), or waiting to be engaged (waiting is not part of the job description). If the employee is engaged to wait then that waiting time is compensable.

**IX. WORKING ON HOLIDAYS**

Holiday time should not be considered under FLSA Compensatory Time unless the employee exceeds his/her regularly scheduled work week.

**X. EXTRA-HELP OVERTIME**

"Part-time" employees are treated the same as full time employees if the following conditions are met:

- A. Extra-help employees must work in excess of 40 hours to be eligible for overtime provisions.
- B. Perform non-exempt duties before they can be credited for time worked in excess of 40 hours per week. For example: If an extra-help employee is employed 32 hours as their "normal" workweek, overtime cannot be computed by using the time worked that exceeds 32 hours; overtime must be computed by using time over 40 hours if the employee works 40 hours or more that week. If the employee works 38 hours they simply get 6 hours more regular time.

**XI. WORKWEEK**

For Fire Protection, Law Enforcement or Security personnel if a work period of 28 days is more appropriate than a seven-day week, overtime (at time-and-one-half) is compensated for hours worked over 212 for fire protection activities and 171 for law enforcement activities.

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If the regular work period (cycle) is more than seven days but less than 28 days, the hours worked during the period must be in the same ratio as the standard.

**XII. PROCEDURES FOR RECORDING FLSA COMPENSATORY TIME**

FLSA Compensatory Time must be recorded on an appropriate time form. An example of a form developed for this purpose is attached (see Appendix B). The Division or Offices that have not developed a form for capturing Compensatory Time may use this form. Otherwise, the Division/Office Compensatory Time form may be used.

- A. **Agencies on State Payroll System** - FLSA Compensatory Time must be recorded in no less than fifteen-minute increments. Time worked less than fifteen minutes must be rounded up to the nearest fifteen-minute increment.
  
- B. **Agencies not on State Payroll System** - FLSA Compensatory Time may be recorded in one-tenth increments. Time worked must be rounded up to the nearest one-tenth of an hour.

**XIII. PROCEDURES FOR PAYMENT FOR FLSA COMPENSATORY TIME**

Procedures for paying FLSA Compensatory Time will be in accordance with the Office of Personnel Management regulations.

**XIX. DEPARTMENT CONTACT**

Any questions concerning DHS Policy Number 1031 should be directed to:

Office of Administrative Services  
Human Resources/Support Services Section  
Policy and Administrative Program Management  
Post Office Box 1437/Slot WG3  
Little Rock, Arkansas 72203-1437  
Telephone: (501) 682-5835

## **APPENDIX A**

### **Overview of Exemptions From Both Minimum Wage And Overtime Pay**

#### **Exemption for Executive, Administrative, Professional, Computer Employees**

This provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, and professional employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

#### **Executive Exemption**

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

#### **Administrative Exemption**

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

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#### **Professional Exemption**

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

#### **Computer Employee Exemption**

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

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- 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

#### **Blue Collar Workers**

The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

#### **Police, Fire Fighters, Paramedics & Other First Responders**

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

#### **Other Laws & Collective Bargaining Agreements**

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

#### **Amplification of Exemptions**

Policy 1031, at Section II, B. 3. above, provides links to the Department of Labor Employment Standards Administration explaining in more detail the exemptions from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, and professional employees.