

1031 FAIR LABOR STANDARDS ACT (FLSA)

This policy provides guidance regarding the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, for employees of the Arkansas Department of Human Services (DHS). 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. See also OPM Policy 28.

I. Compensatory Time/Overtime: Time earned by an employee classified as non-exempt under FLSA when the employee works in excess of his or her regularly scheduled shift. Depending on the Division and each fiscal year approvals, any hours worked over forty (40) hours may be calculated and banked as compensatory time or calculated and paid as overtime.

(A) FLSA Compensatory Time – FLSA Compensatory Time is awarded to employees classified as non-exempt under the FLSA when the employee works in excess of forty (40) hours in the workweek. This time is computed at 1.5 times the excess time the employee worked and banked as compensatory time. No category of leave is computed in arriving at the forty (40) hours.

(B) Overtime is awarded to employees classified as non-exempt under the FLSA when the employee works in excess of forty (40) hours in the workweek. This time is computed at 1.5 times the excess time the employee worked and paid as overtime. No category of leave is computed in arriving at the forty (40) hours.

To pay overtime, Divisions and Offices shall have an overtime appropriation approved by the State Fiscal Officer and have appropriate funding within the agency's existing budget. If funding does not exist within the agency's budget, compensation in the form of overtime will not be awarded to non-exempt employees. DHS may either not permit non-exempt employees to work in excess of forty (40) hours during any workweek or award FLSA Compensatory Time off in lieu of overtime pay. To control the costs of salaries, wages, and related expenditures and in keeping with the spirit of Ark. Code Ann. § 19-4-1612, it is DHS policy that overtime pay for employees is the least desirable method of compensation for overtime work.

(C) Employee Classifications – All exempt and non-exempt employee classifications have been identified by OPM and can be found at this link: <https://www.transform.ar.gov/personnel/resources/class-code-search/>

II. Hours Worked

(A) It is management's responsibility to ensure 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 his/her regularly scheduled work hours.

- (B) **Waiting Time** – All time spent by employees in waiting while on duty must be counted as hours worked. Under FLSA regulations, waiting by an employee who has been relieved of duty need not be counted as hours worked, if:
 - (1) The employee is completely relieved from duty and allowed to leave the job; or,
 - (2) The employee is relieved until a definite, specified time; and
 - (3) The relief period is long enough for the employee to use the time as he or she sees fit.
- (C) **On Call Time** – Whether the time an employee is on call needs to be counted as compensable working time depends on the employee's freedom while on call. If the employee must remain on the employer's premises or so near that he/she cannot use the time effectively for personal pursuits, the time is compensable. If the employee can come and go freely, even though he/she must leave a phone number where he/she can be reached, the time can be excluded from hours worked.
- (D) **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 are less than twenty (20) minutes.
- (E) **Break Time for Nursing Mothers** – DHS will provide a nursing mother reasonable, paid break time to express milk for her child for one (1) year after the child's birth. DHS also will provide a private, comfortable location for expressing milk. The full details are found in DHS Policy 1033, "Breaks for Expressing Breast Milk".
- (F) **In-Residence Workers** – When an individual is 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.
- (G) **Meal Periods** – A bona fide meal period is one in which the employee is completely relieved of all duties, free to leave his/her duty post, and is at least thirty (30) minutes in duration. If these conditions are met, this time can be excluded from compensable working time and not considered in determining the length of the workday.

- (H) Training Programs, Lectures, and Meetings – Training programs, lectures, and meetings will not be considered working time if the program, lecture, or meeting is not directly related to an employee’s job and:
 - (1) Attendance occurs outside the employee’s regular working hours; and
 - (2) Attendance is voluntary; and
 - (3) The employee does no productive work while attending.
- (I) Travel Time – Whether travel time is compensable depends on the type of travel involved. The following general guidelines apply in determining whether an employee’s travel time is compensable:
 - (1) Home-to-work travel – As a general rule, home-to-work travel is not compensable.
 - (2) 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. Travel time is compensable when an employee is called back to work outside his/her normally scheduled work hours.
 - (3) Out-of-Town Travel (Same Day) – An employee who is sent out of town for same day travel need not be paid for time spent traveling from his/her home to the airport or other transport terminal, but he/she must be paid for all other travel time (except meal periods).

Out-of-Town Travel (Overnight) – An employee who *drives* while on an overnight trip is considered working the entire time he/she is driving. An employee who travels as a *passenger* on an overnight trip is considered working when traveling (except meal periods) during the employee’s normal working hours on the employee’s regular work days as well as non-work days.

III. Accrual

The maximum FLSA Compensatory Time that may be accrued 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 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, Office Chief, or designee of this situation so a plan for advance scheduling of usage for the time can be developed.