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| <b>ADMINISTRATIVE DIVISION</b><br>HR Division of Human Resources                  |   | <b>POLICY NUMBER</b><br>HR 1.84 |
| <b>POLICY TITLE</b><br>Minimum Wage, Official Workweek, and Overtime Compensation |   |                                 |
| <b>SCOPE OF POLICY</b><br>USC System  | <b>DATE OF REVISION</b><br>January 31, 2019                 |                                 |
| <b>RESPONSIBLE OFFICER</b><br>Vice President for Human Resources                  | <b>ADMINISTRATIVE OFFICE</b><br>Division of Human Resources |                                 |

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## **PURPOSE**

In accordance with the Fair Labor Standards Act (FLSA) and the State Human Resources Regulations, the University of South Carolina has established the following policy on minimum wage, the official workweek, and overtime compensation.

## **DEFINITIONS**

**Call Back Pay:** Call back pay is pay for an employee to report to work either before or after normal duty hours to perform emergency services.

**Compensatory Time:** Leave time granted to an employee in lieu of overtime pay, subject to limits established in the FLSA.

**Exempt Employees:** Employees of the University of South Carolina who are exempt from both the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) due to employment in a bona fide executive, administrative, professional or outside sales capacity.

**Fair Labor Standards Act (FLSA):** The FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

**Full-Time Equivalent (FTE):** A position authorized by the General Assembly which is expressed as a numerical value as a percentage of time in hours and of funds.

**Holiday Compensatory Time:** Leave time earned by an employee for work performed on a holiday.

**Nonexempt Employees:** Employees of the University of South Carolina who are covered by the Fair Labor Standards Act (FLSA) and who are subject to both the minimum wage and overtime requirements of the law.

**On-Call Pay:** On-call pay is pay for employees to remain available to return to work within a specified period of time.

**Overtime:** Overtime is actual hours worked in excess of 40 hours in a given seven consecutive day period. FLSA contains special provisions for determining when overtime is earned by employees in certain job categories including fire protection, emergency medical personnel, and law enforcement.

**Shift Differential:** Additional amount of pay awarded to employees assigned to an evening, night, weekend, rotating, or split-shift.

## **POLICY STATEMENT**

The provisions set forth in this policy apply to all employees of the University of South Carolina, unless otherwise noted.

### **A. General Provisions**

1. Department heads and authorized supervisors may require an employee under their supervision to work hours in excess of the employee's regular workweek in order to meet the needs of the University of South Carolina. However, the use of overtime should be an exception to the regular work schedule in any department. Every attempt should be made to avoid the repetitive and chronic use of overtime.
2. It shall be the responsibility of each department head/supervisor to determine that the provisions of this policy are administered fairly, consistently, and in the best interest of the university.
3. Exemptions from the minimum wage and overtime pay requirements of the Fair Labor Standards Act (FLSA) for any non-student employee in a bona fide executive, administrative, professional, or computer employee position will be determined by the Vice President for Human Resources or the Vice President's designee. To qualify for exemption, employees must meet certain tests regarding their salary basis and job duties. The Wage and Hour Division of the U.S. Department of Labor has outlined specific requirements that must be

met in order to qualify for exemption. These requirements may be found at [www.dol.gov](http://www.dol.gov). Exempt employees are not subject to the minimum wage, overtime, or record keeping requirements of the law.

4. All other employees will be nonexempt. Nonexempt employees are subject to the minimum wage, overtime, and record keeping requirements of the FLSA.
5. A nonexempt employee must receive approval from the authorized supervisor prior to working in excess of 40 hours in one workweek. Each supervisor is responsible for the prior approval of hours worked that will result in overtime. Unauthorized overtime must be compensated. Unauthorized overtime may result in disciplinary action for supervisors and/or employees.
6. Within the provisions of the FLSA and university policy, department heads are responsible for implementing reasonable management controls to assure that unauthorized overtime work is not being performed.

#### B. Minimum Wage and Compensation

1. All nonexempt employees of the University of South Carolina must not be paid less than the current minimum wage.
2. Compensation of all employees is based on 40 hours per week or 2080 hours per year.
3. The regular rate of pay includes all remuneration for employment paid to an employee including but not limited to base pay, and all compensation not included in base pay as outlined in State Human Resources Regulations, with the exception of discretionary bonuses.
4. The hourly rate is the “regular rate” for temporary nonexempt employees. This rate is calculated by dividing the annual salary by 2080 hours. Temporary nonexempt employees must be compensated for all hours worked. This requirement does not apply to temporary exempt employees. A temporary exempt employee must be paid a salary regardless of the hours worked.

#### C. Official Workweek

1. The normal workweek for university full-time employees is 37.5 hours. However, employees shall not receive additional compensation or compensatory time for hours worked between 37.5 and 40 per workweek. Any employee may be required to work up to 40 hours per workweek without additional compensation or compensatory time.
2. For record keeping purposes, the University workweek begins at 12:01 a.m. Sunday and ends at midnight the following Saturday.

3. Each workweek stands alone for the purpose of determining overtime compensation for nonexempt employees.
4. Law enforcement employees may be required to work a variable schedule over a 28-day work period that begins at 12:01 a.m. Sunday and ends 28 days later at midnight.

#### D. Overtime and Hours Worked

1. Overtime is defined as all hours worked by nonexempt employees in excess of 40 hours in an established workweek. For nonexempt law enforcement personnel who have a 28-day work period overtime is defined as all hours worked in excess of 171 hours in one work period.
2. Hours worked includes all time an employee is required to be on duty or at a prescribed workplace and all time during which an employee is permitted to work. This includes any bona fide work the employee performs on or away from the premises if the supervisor knows or has reason to believe that the work is being performed.
3. When calculating overtime hours worked do not include leave time, holiday time, or other paid or unpaid leave.
4. Hours worked in excess of 40 in a workweek are compensable in the form of wages or compensatory time for nonexempt employees. For nonexempt law enforcement personnel who have a 28-day work period, overtime compensation in the form of wages or compensatory time will apply for all hours worked in excess of 171 in one work period.
5. Rest periods, meal periods, or breaks are not required by the FLSA; however, when breaks are given, breaks of up to 15 minutes must be counted as time worked. Supervisors should use discretion in the number of breaks authorized. Breaks may not be used to allow an employee to come in late, to leave early, or to extend the lunch period.
6. A bona fide meal period of 30 minutes or more that occurs during the scheduled workday is not hours worked if the employee is completely relieved from duty for the purpose of eating a meal.
7. When a nonexempt employee by reason of official responsibilities is required to attend lectures, meetings, training programs, etc., the time is considered hours worked.
8. Under warranted circumstances, a nonexempt employee may be allowed by their department chair or authorized supervisor to work in excess of the normal work day and 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 type of work rescheduling precludes working over 40 hours in a workweek and eliminates the need for overtime payment.
9. On-Call Status

- i. A nonexempt employee who is required to remain on-call on the employer's premises or prescribed work place, or who must remain accessible to the point that time may not be used for his or her own purposes, is working while "on-call." These hours are considered work hours and should be counted for purposes of determining overtime hours.
- ii. A nonexempt employee who is not confined to their home or to any particular place but only required to leave work where they can be reached, is not working while on-call. These hours are not considered work hours and should not be counted for purposes of determining overtime hours.
- iii. On-Call Pay - Payment to an employee to remain available to return to work within a specified period of time may be made only with the prior written approval of the USC Division of Human Resources.
- iv. Call Back Pay –The Division of Human Resources shall determine which groups of employees shall be subject to call back pay. Units who anticipate the need to call back employees for emergency services must establish a call back plan which must be approved by the Division of Human Resources prior to implementation.

Nonexempt employees shall be compensated for hours worked as a result of a call back at their regular rate of pay plus any shift differential for which they may be eligible and such time shall be counted in computing any overtime that may be due. The employee will be paid for hours worked unless the services rendered require less than two hours on the job or if no work is available when the employee reports to work, then the employee shall be compensated for a minimum of two hours. An employee shall not receive call back pay if the call back has been cancelled and the employee received notice in advance not to report to work or if the employee refuses alternate work that is offered upon reporting to work.

#### 10. Travel Time

- i. Time spent traveling to and from the regular place of employment is not counted as hours worked.
- ii. For nonexempt employees engaged in business travel that is completed in one work day, all hours spent traveling are considered hours worked regardless of time of day or day of the week.
- iii. For nonexempt employees engaged in business travel that includes an overnight stay, only those hours that coincide with the employee's regular work hours are considered hours worked. This provision is applicable on regular working days as well as during the corresponding hours of non-working days.

#### E. Overtime Compensation and Holiday Compensation for Nonexempt Employees

- 1. Employees whose positions are nonexempt from the provisions of the FLSA are eligible for overtime compensation in the form of wages or compensatory time and will receive such

compensation for all hours worked in excess of 40 in one workweek. A nonexempt employee shall be paid no less than one and one-half 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 hours for each hour of overtime worked. For nonexempt law enforcement personnel who have a 28-day work period, overtime compensation in the form of wages or compensatory time will apply for all hours worked in excess of 171 in one work period.

2. All hours worked by nonexempt employees must be recorded on the university's timekeeping system. The requirement that overtime pay must be paid or compensatory time must be granted to nonexempt employees after 40 hours of work in a workweek shall not be waived by written or oral agreement between the supervisor and the employee.
3. For nonexempt employees, department heads may elect to pay overtime wages or may grant compensatory time for all hours worked in excess of 40 in a given workweek (171 hours in a 28-day work period for law enforcement personnel). The decision will be based on the work needs and budget of the department.
4. Overtime pay or compensatory time will be managed within existing campus or departmental budgets and with existing personnel.
5. A nonexempt employee in an FTE position who is required to work on a university holiday must record those hours on the university's timekeeping system, and will be given compensatory holiday leave credit in accordance with the State Human Resources Regulations and university policy 1.15 University Holiday Leave Policy. Time worked on a holiday shall be used in computing total hours worked.
6. Nonexempt employees may accrue up to 240 hours of compensatory time. For all hours above 240, the payment of overtime wages is mandatory and the payment will be included in the employee's next paycheck, subject to completion of all necessary processing. For law enforcement personnel, the limit is 480 hours. All compensatory leave balances for nonexempt employees, to include law enforcement, will be paid at the end of each fiscal year.
7. Nonexempt employees will be paid for accumulated compensatory time upon termination of employment or transfer to another state agency.
8. Compensatory time must be paid out 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.
9. If a nonexempt employee moves to an exempt position within the university, the employee must be allowed to use all accrued compensatory time or be paid for all such time by the losing department prior to the employee starting the exempt position.
10. For specific information regarding research grant or time-limited employees, please refer to university policy HR 1.85 Research Grant or Time-Limited Positions.

F. Compensatory Time for Exempt Employees

1. Employees whose positions are exempt from the FLSA are not eligible for overtime wages.
2. At the discretion of the department chair or director, 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 nonexempt employee. If granted, compensatory time must not be at a rate greater than one hour of compensatory for each hour worked in excess of 40 in a given workweek.
3. An exempt employee in an FTE position who is required to work on a university holiday will be given compensatory leave credits in accordance with the State Human Resources Regulations and university policy 1.15 University Holiday Leave Policy.
4. Compensatory time for exempt employees may not accumulate for more than one calendar year and may not be carried over from one calendar year to the next. Compensatory time that has not been taken by the end of the calendar year will be forfeited.
5. Exempt employees will not receive payment for compensatory time not taken under any circumstance, including leaving university employment.
6. Within the provisions listed above, it is the responsibility of each department head or director to develop procedures for the authorization and use of compensatory time for exempt employees and to keep such records as may be required to substantiate the consistent application of the department's procedures.

**PROCEDURES**

Procedures and guidance related to this policy can be found on the Division of Human Resources website at <http://hr.sc.edu/>.

**RELATED UNIVERSITY, STATE AND FEDERAL POLICIES**

- [Fair Labor Standards Act \(FLSA\)](#)
- [State Human Resources Regulations 19-705.07, 19-707, 19-708,](#)
- [HR 1.15 University Holiday Leave Policy](#)
- [HR 1.78 Dual Employment](#)
- [HR 1.85 Research Grant or Time-Limited Positions](#)

**HISTORY OF REVISIONS**

| DATE OF REVISION | REASON FOR REVISION |
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| January 31, 2019 | Updated to new format<br>Clarified requirement for review of call-back plan.<br>Incorporated language recommended in the Division of State Human Resources model policy. |
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