

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

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TITLE: OVERTIME COMPENSATION

**POLICY
REFERENCE NUMBER:** 8-2-104

**DIVISION OF
RESPONSIBILITY:** Human Resource Services

DATE OF LAST REVISION: June 9, 2017

DISCLAIMER

PURSUANT TO SECTION 41-1-110 OF THE CODE OF LAWS OF SC, AS AMENDED, THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SC STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION / THE SC TECHNICAL COLLEGE SYSTEM. THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM RESERVES THE RIGHT TO REVISE THE CONTENT 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 State Board for Technical and Comprehensive Education (SBTCE) has developed and adopted general guidelines for overtime compensation in accordance with the Fair Labor Standards Act (FLSA) and the rules and regulations of the South Carolina Department of Administration.

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.

Exempt/Nonexempt Status Under the Fair Labor Standards Act

Employees are considered “Exempt” if their job duties, or their salary, meet certain thresholds within the FLSA. Exempt employees are not subject to the FLSA minimum wage, overtime, or recordkeeping requirements. The exempt status of an employee in a bona fide executive, administrative, professional, or computer employee position shall be determined by the System

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Office/college human resources office. All other employees shall be non-exempt. Non-exempt employees are covered by, or subject to, the minimum wage, overtime, and recordkeeping requirements of FLSA.

I. WORKWEEK

The normal workweek may be 37.50 or 40.00 hours as determined by each college. The normal workweek for the System Office is 37.50 hours. The FLSA workweek is a regular recurring period of seven (7) consecutive twenty-four (24) hour periods or 168 consecutive hours. Colleges may determine their own seven (7) consecutive twenty-four (24) hour periods as desired. Overtime is defined as all hours worked in excess of forty (40) hours during the established FLSA workweek. The use of overtime should be an exception to an employee's regular work schedule and should only be required on an occasional basis. Any employee may be required to work up to forty (40) hours per workweek without additional compensation.

Exception: In the case of any employee engaging in law enforcement activity, these employees may have work schedules up to (28) consecutive days 24-hour periods, i.e. 672 consecutive hours.

II. COMPENSATION

Compensation of all employees is based on forty (40) hours per week or two thousand eighty (2080) hours per year. A non-exempt employee shall be paid no less than one and one-half (1½) times his/her regular rate of pay for all hours worked over forty (40) in a workweek or granted compensatory time at a rate of one and one-half (1½) hours for each hour of overtime worked. Regular rate includes all remuneration for employment paid to an employee to include base pay and all compensation not included in the base pay as outlined in the State Human Resources Regulations, with the exception of discretionary bonuses. The hourly rate of pay is calculated by dividing the annual salary plus longevity increases by two thousand eighty (2,080) hours and adding on the appropriate shift differential hourly rate. Additional compensation may not be paid for hours worked between thirty-seven and one-half (37.50) and forty (40) hours per week. Overtime pay or compensatory time may not be waived by agreement between the supervisor and the employee. Non-exempt employees must not be paid less than minimum wage.

Note: Special overtime provisions may apply to non-exempt employees engaged in law enforcement activity, who must receive overtime compensation in the form of overtime payment or compensatory time for all hours worked over 171 in a twenty-eight (28) day work period, or a proportional amount of hours in a shorter work period.

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Employees will be compensated by the following methods:

A. Compensatory Time.

Compensatory time will be granted in lieu of payment at the rate of one and one-half (1-1/2) times the hours worked over forty (40) hours.

1. Employees will be allowed to accrue only up to two hundred forty (240) hours of compensatory time before any monetary payment is made. For overtime worked for an employee with an accumulation of 240 hours of compensatory time, the overtime must be paid in the employee's next regular paycheck.

Note: A non-exempt employee engaged in law enforcement activity may not accumulate more than 480 hours of compensatory time. Any employee who has accumulated 480 hours of compensatory time shall be paid overtime for additional hours of work.

2. Management may require employees to take compensatory time at a time that does not unduly disrupt the operation of the System Office/college.
3. Compensatory time off may not be granted for hours worked between thirty-seven and one-half (37.50) and forty (40) hours per week. Any employee may be required to work up to forty (40) hours per week without any additional compensation.

B. Monetary Compensation.

Monetary compensation may be granted to the employee. Such monetary compensation will be given only after approval by the System/College President or designee. When monetary compensation is granted, it will be paid at the rate of one and one-half (1-1/2) times the employee's regular rate for all hours worked over forty (40) hours.

C. Holiday Compensation.

Holiday compensatory time will be granted in accordance with Section 19-708.04 of the State Human Resources Regulations and SBTCE Procedure 8-3-108.1 [Holidays]. Time worked on a legal holiday shall be used in computing total hours worked. Holiday compensatory time will be paid to college employees who are not allowed to take the time earned for working on a holiday within one year from

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the date of the holiday, or 90 days in the case of System Office employees. 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.

III. HOURS WORKED

Hours worked include all time that an employee is required to be on duty or at the prescribed work place and all time during which an employee is permitted to work. This includes 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. Even if not approved, unauthorized work shall be counted as hours worked if the supervisor could have stopped the work but did not, or if he or she knows or has reason to know of the work performed. Specific items related to hours worked are as follows:

- A. Time spent as a volunteer is not included in hours worked. Non-exempt employees may not volunteer to perform work that is in the same capacity as or an extension of the work duties they perform for the State.
- B. On-call time is not regarded as work time unless an employee is required to remain at the employer's premise or prescribed work place or is restricted that the employee cannot use the time effectively for his or her own purposes. If an employee who is on-call is not confined to home or any particular place, but is required only to leave word where he or she may be reached, the hours spent on call are not regarded as working time.
- C. A bona fide meal period (a minimum of 30 minutes uninterrupted) that occurs during the scheduled workday is not hours worked if the employee is completely relieved from duty for the purpose of eating a regular meal.
- D. Rest periods or coffee breaks of short duration are not required, but if given must be counted as hours worked. Short duration is defined as no more than fifteen (15) minutes during the morning and no more than fifteen (15) during the afternoon each work day. Breaks shall not be used to allow an employee to come in late, to leave early, or to extend the lunch period.
- E. Travel time for non-exempt employees may be hours worked under some

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conditions. Ordinary home to work travel or vice versa is not considered time worked regardless of the day of the week. All time spent traveling on one-day assignments is considered work hours regardless of the day of the week and the time of day it occurs. When away from home (overnight), travel time is considered time worked only when it cuts across the employee's normal working hours. This is applicable on both regular workdays and corresponding hours of non-work days.

- F. When a non-exempt employee, by reason of official responsibilities, is required to attend lectures, meetings, training programs, etc., such time will be considered work time.
- G. The hours a non-exempt employee works (1) in a different capacity, (2) occasional and sporadic, (3) as extensions of normal work duties and (4) for other state agencies are eligible for overtime compensation based on the total number of hours worked per week for the State of South Carolina.
- H. To eliminate the need for overtime payment, under warranted circumstances, a nonexempt 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 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.
- I. Employees on any leave status will not be considered as working in the computation of total hours worked.

IV. APPROVAL AND BUDGETARY CONSTRAINTS

Overtime shall not be authorized unless there is an absolute need to meet a deadline that could not be met during the normal workweek, to overcome productive time lost due to mechanical failure, or to meet the demands of a crisis situation. The use of overtime should be an exception to an employee's regular work schedule and should only be required on an occasional basis. Any overtime worked is subject to the following conditions:

- A. Overtime worked by any non-exempt employee must have the prior approval of the System/College President or designee.
- B. Overtime costs must be managed within the existing budget.

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C. Unauthorized overtime must be compensated.

D. Unauthorized overtime may result in disciplinary action for managers and/or employees.

V. FLSA STATUS CHANGE

If a non-exempt employee accepts a position that is considered exempt either within the System Office/college 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. 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 (3) years of employment or the final regular rate received by the employee, whichever is higher.

VI. TEMPORARY EMPLOYEES

The hourly rate is the “regular rate” for non-exempt temporary employees. Non-exempt temporary employees shall be compensated for all hours worked. All System Office temporary employees are considered as non-exempt.

VII. RECORDKEEPING

Weekly time records shall be kept in accordance with FLSA. These records must record the daily hours worked and the total hours worked during the standard FLSA workweek.

The System Office/college must maintain the following information for nonexempt employees.

- a. Name;
- b. Home address;
- c. Date of birth if under 19 years of age;
- d. Gender and occupation;
- e. Employee workweek, including time of day and day of week on which the employee’s workweek begins;
- f. Regular hourly rate of pay for any week when overtime is worked and overtime pay is due;
- g. Hours worked each workday and total hours worked each week;

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- h. Total daily or weekly straight-time wages for all hours worked;
- i. Total overtime excess compensation for the workweek;
- j. Total additions or deductions from wages each pay period;
- k. Total wages paid each pay period;
- l. Date of payment and pay period covered; (29 CFR 516.2)
- m. The number of hours of compensatory time earned each workweek, or other applicable work period, by each employee at the rate of 1 1/2 hours for each overtime hour worked;
- n. The number of hours of such compensatory time used each workweek or other applicable work period by each employee; and
- o. The number of hours of compensatory time compensated in cash, the total amount paid, and the date of such payment. (29 CFR 553.50)