

SECTION: Personnel Policies and Procedures  
SUBJECT: Fair Labor Standards Act  
SOURCE REFERENCE: Board of Trustees Policy 614.01, 610.01

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NUMBER: F/6.1

## Fair Labor Standards Act

The Board of Trustees and the institutions under its direction and control shall comply with the applicable provisions of the *Fair Labor Standards Act*. The Fair Labor Standards Act (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.

The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) administers and enforces the FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off instead of cash overtime pay.

Covered, nonexempt workers are entitled to a minimum wage of \$7.25 per hour effective July 24, 2009. Nonexempt employees are employees whose positions do not meet the FLSA tests for exemption from the overtime provisions. Nonexempt workers must be compensated with compensatory time off or overtime pay after 40 hours of work in a workweek. For purposes of this policy, the normal workweek constitutes the period of time between 12:01 a.m. Sunday through 12:00 a.m. the following Sunday.

The law also provides for certain exemptions from overtime pay, including exemptions for executive, administrative, professional, and certain computer employees. Exempt employees are not eligible to receive overtime or compensatory time remuneration.

For more information on the FLSA go to the Department of Labor website at <https://www.dol.gov/WHD/flsa/index.htm>.

## Compensatory Time and Leave

Non-exempt full-time employees are not permitted to work over 40 hours in one week, unless expressly required and approved by a supervisor. Non-exempt full-time employees who work over 40 hours without the express requirement and approval of their supervisor will be disciplined. Non-exempt full-time employees are entitled to overtime pay unless compensatory time is awarded instead when they physically work over 40 hours in one week (physical work hours do not include any paid leave time).

It is the policy of the Alabama Community College System that all institutions and entities shall award compensatory time rather than overtime to non-exempt full-time employees physically working over 40 hours in one week. Supervisors and non-exempt employees have a duty to work together to ensure that the employee does not work over 40 hours each week, absent emergency. In emergency situations where it is necessary for non-exempt employees to work over 40 hours in one week (and this has been required and approved by the supervisor), non-exempt employees must be given one and one-half hour for every hour

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physically worked over 40 in compensatory time, meaning if the employee works 44 hours in one week, then the employee receives 6 hours (4 x 1.5) in compensatory time. The supervisor of the non-exempt full-time employee must keep track of compensatory time and the non-exempt employee must use the time with supervisor approval within a reasonable period of it being accrued (recommend within the next month).

Supervisors are responsible for ensuring that compensatory time is being taken by non-exempt full-time employees so that overtime is not required to be paid. Non-exempt full-time employees may not accrue more than 80 hours of compensatory time, and any time over and above 80 hours in compensatory time will be required to be paid as overtime. Compensatory time for full-time non-exempt employees will be converted to overtime and paid at the time of separation at the College.

As an alternative to requiring an employee to work more than forty (40) hours during a workweek in which an emergency condition exists, the President or his/her designee may adjust the schedule of one or more employees so as to require such employee(s) to work a greater number of work hours than normal for one or more workdays and a lesser than normal number of work hours for one or more other workdays during the workweek in which the emergency condition exists.

(Reference: 29 USCA sec. 207 (a); 29 CFR 778.102)

## Holidays and Weekends

Time worked on holidays and weekends will be compensated at the normal rate unless the time physically worked causes a non-exempt employee to exceed 40 hours in the workweek.

Example #1: A non-exempt full-time employee has a 40-hour per week schedule. The employee is off Monday for the Labor Day holiday. The employee then works 8 hours on Tuesday, Wednesday, Thursday, Friday, and is required to work on Saturday for 8 hours that same week. The employee earned 40 work hours and 8 hours of holiday pay. No overtime is due because the employee did not actually work over 40 hours during the week. Options for compensation: (1) the employee may take 8 hours off the very next week to make up for Saturday hours (giving straight comp time, not time and a half because overtime was not earned), or (2) the employee may be paid for 8 additional hours for the earning period at the normal rate of pay.

Example #2: A non-exempt full-time employee has a 40-hour per week schedule. The employee is required to work on a Monday holiday (8 hours), Tuesday (8 hours), Wednesday (8 hours), Thursday (8 hours), Friday (8 hours), and Saturday (8 hours). The employee earned 56 hours (8 hours holiday pay, plus 48 actual work hours). Since the employee worked 8 hours over 40 hours during the week, the employee earned 8 hours of overtime. This employee should be awarded comp time at time and a half (8 X 1.5 = 12 hours). And, this employee should be paid 48 regular pay hours (8 hours for holiday + 40 regular hours). Holiday pay should be paid to an employee, not converted to comp time.

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### **Averaging Hours Prohibited**

In computing hours worked, each workweek stands alone. Hours worked in two or more workweeks may not be averaged for purposes of computing hours worked in a workweek.

(Reference: 29 CFR 778.104-.105)

### **Working Extra Hours in a Day**

An employee is not necessarily entitled to overtime pay (that is, pay at one and one-half times the normal rate), either in the form of pay or compensatory time off at one and one-half times the normal rate of compensation, for hours worked in a day beyond those normally worked in such day. However, under those circumstances described in this procedure, a nonexempt employee may be entitled to overtime compensation for hours worked during a workweek in excess of forty (40).

(Reference: 29 CFR 778.102)

### **Lectures, Meetings, and Training Programs**

The following is excerpted from 29 CFR 785 of the Federal regulations adopted to carry out the FLSA.

785.27           General.

Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if the following four criteria are met:

- (a) Attendance is outside of the employee's regular working hours;
- (b) Attendance is in fact voluntary;
- (c) The course, lecture, or meeting is not directly related to the employee's job, and;
- (d) The employee does not perform any productive work during such attendance.

785.28 Involuntary attendance.

Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

785.29 Training directly related to employee's job.

The training is directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill. For example, a stenographer who is given a course in stenography is engaged in an activity to make her a

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better stenographer. Time spent in such a course given by the employer or under his auspices is hours worked. However, if the stenographer takes a course in bookkeeping, it may not be directly related to her job. Thus, the time she spends voluntarily in taking such a bookkeeping course, outside of regular working hours, need not be counted as working time. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in his present job, the training is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work.

#### 785.30 Independent training.

Of course, if an employee on his own initiative attends an independent school, College or independent trade school after hours, the time is not hours worked for his employer even if the courses are related to his job.

#### 785.31 Special situations.

There are some special situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of

his employees a program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employee at such courses outside of working hours would not be hours worked even if they are directly related to his job, or paid for by the employer.

## Travel Time

The following is excerpted from 29 CFR 785 of the Federal regulations adopted to carry out the FLSA.

#### 785.35 Home to work; ordinary situation.

An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not work time.

#### 785.36 Home to work in emergency situations.

There may be instances when travel from home to work is overtime. For example, if an employee who has gone home after completing his day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of his employer's customers, all time spent on such travel is working time. The Divisions are taking no position on whether travel to the job and back home by an employee who receives an emergency call outside of his regular hours to report back to his regular place of business to do a job is working time.

#### 785.37 Home to work on special one-day assignment in another city.

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A problem arises when an employee who regularly works at a fixed location in one city is given a special one-day work assignment in another city. For example, an employee who works in Washington, D.C., with regular working hours from 9 a.m. to 5 p.m. may be given a special assignment in New York City, with instructions to leave Washington at 8 a.m. He arrives in New York at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington at 7 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it is like travel involved in an emergency call (described in Section 785.36), or like travel that is all in the day's work (see Section 785.38). All the time involved, however, need not be counted. Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

#### 785.38 Travel that is all in the day's work.

Time spent by an employee in travel as part of his principal activity, such as travel job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked. (*Walling v. Mid-Continent Pipe Line Co.*, 143 F. 2d 308 (C.A. 10, 1944))

#### 785.39 Travel away from home community.

Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday, the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy the Divisions will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

#### 785.40 When private automobile is used in travel away from home community.

If an employee is offered public transportation but requests permission to drive his car instead, the employer may count as hours worked either the time spent driving the car or the time he would have had to count as hours worked during working hours if the employee had used the public conveyance.

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785.41 Work performed while traveling.

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat, or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

### Time Sheet

A time sheet shall be completed for all nonexempt employees, to record hours worked, sick leave, annual leave, personal leave, and holiday time. (*See Form F/6.1-A- Timesheet*) Each institution shall be responsible for developing its own system for the management of this process. Time sheets may be maintained manually or through the utilization of a computerized system. A time sheet shall be completed by the employee and submitted to the immediate supervisor for approval. The supervisor shall be responsible for the review of the hours reported on the time sheet. It shall be the responsibility of the employee's supervisor to monitor the work hours. If approved, the time sheet shall be submitted to the appropriate department for payroll purposes. The completed and approved time sheets shall be retained in accordance with applicable state and federal regulations.