

State Human Resources Policy #E24-103.03

Hours of Work/Overtime

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY 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.

DEFINITIONS

Agency - The South Carolina Military Department/Office of the Adjutant General.

Compensation - Monetary payment for services rendered. Compensation of all employees is based on forty (40) hours per week or 2,080 hours per year.

Exempt Employee - An employee who is exempt from both the minimum wage and overtime requirements of the Fair Labor Standards Act due to employment in a bona fide executive, administrative, professional, or computer position.

Hourly Rate - The Regular Rate of Pay for hourly employees. This rate is calculated by dividing the annual salary by 2,080 hours.

Nonexempt Employee - An employee who is covered by the Fair Labor Standards Act and who is, therefore, subject to both the minimum wage and overtime requirements of the law.

Regular Rate of Pay - Remuneration for employment paid to an employee to include base pay, and all compensation not included in base pay as outlined in the State Human Resources Regulations, with the exception of discretionary bonuses.

SCEIS – South Carolina Enterprise Information System

Workday - The number of hours upon which leave and holidays are based. To determine the number of hours in an average workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

FEDERAL REQUIREMENTS

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.

POLICY

1. The South Carolina Military Department's business hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday (except on scheduled State Holidays). Program Managers and Department Heads will ensure there are adequate and knowledgeable employees present during those hours.

a. The Agency may vary an employee's work schedule through the use of alternative scheduling strategies to meet the needs and service delivery requirements of the Agency.

b. The Agency may require an employee to work additional hours when responsibilities of the Agency cannot be accomplished in the normal work hours observed by the Agency.

2. The Agency workweek is seven consecutive 24-hour periods beginning at 12:01 a.m. on Sunday and ending at 12:00 p.m. (midnight) on Saturday.

3. The Agency standard works hours are forty (40) hours in a 7-day work period except as follows:

- Firefighters: 106 hours in a fourteen (14) day work period
- Security Personnel: 86 hours in a fourteen (14) day work period.

4. For overtime purposes, the Agency has two categories of employees: (a) Nonexempt (overtime provisions of FLSA apply) and (b) Exempt (overtime provisions of FLSA do not apply).

a. Exempt Employees

(1) Employees are considered exempt if their job duties (i.e., a bona fide executive, administrative, professional, or computer position) and their salary meet certain thresholds within the FLSA.

(2) Exempt employees are not subject to the FLSA minimum wage, overtime, or record keeping requirements. As such, exempt employees are expected to work as many hours as required to perform the duties of the position.

b. Nonexempt Employees

(1) All employees who are not considered exempt from the FLSA are considered nonexempt. All employees compensated on an hourly rate basis must be classified as nonexempt.

(2) Nonexempt employees are covered by, or subject to, the minimum wage, overtime, and recordkeeping requirements of the FLSA.

(3) Nonexempt employees must be paid not less than the current minimum wage.

(4) Nonexempt employees shall be compensated (i.e., Regular Rate of Pay, Overtime, Compensatory Time) for all hours worked.

(5) All temporary employees are classified as nonexempt.

(a) The hourly rate for temporary employees is the Regular Rate of Pay.

(b) Temporary employees shall be compensated (i.e., Regular Rate of Pay, Overtime) for all hours worked.

(c) Temporary employees will not receive Compensatory Time.

5. Hours Worked

a. All time the employee is required to be on duty or at the prescribed workplace, and all time during which the employee is permitted to work are counted as hours worked. This includes any bona fide work the employee performs on or away from the premises if the supervisor knows or has reason to believe the work is being performed.

b. Rest Periods/Breaks.

(1) Rest periods or breaks of short duration are counted as hours worked. One (1) morning and one (1) afternoon "break" of no more than fifteen (15) minutes each is permitted per an 8-hour work day.

(2) Employees cannot use rest periods or breaks to come in late, leave early, or extend the lunch period.

c. On Call

(1) The hours spent on-call is counted as hours worked if an employee is required to remain at the employer's premise or prescribed work place, or is so restricted the employee cannot use the time effectively for his or her own purposes.

(2) The hours spent on-call are not counted as hours worked if an employee who is on-call is not confined to his or her home or any particular place but is required only to leave work where he or she can be reached.

d. Meal Periods. Bona fide meal periods of thirty (30) minutes to one (1) hour (whichever is applicable to corresponding work schedule) that occur during the scheduled workday are not counted as hours worked if the employee is completely relieved from duty for the purpose of eating a meal.

e. Travel

(1) Ordinary home-to-work travel or vice versa is not counted as hours worked.

(2) Time spent traveling on one-day assignments is counted as hours worked regardless of time of day or day of the week.

(3) Travel away from home involving an overnight stay for employees is counted as hours worked when it occurs during the employee's normal working hours. This provision is applicable not only on regular working days, but also during the corresponding hours of non-working days.

f. Lectures, Meetings and Training. When an employee by reason of official responsibilities is required to attend lectures, meetings, training programs, etc., such time is counted as hours worked.

g. State Holiday. Time worked on a State holiday is counted as hours worked.

h. Time Off. Time off paid in leave status, for State holidays, and/or for Compensatory Time is not counted as hours worked.

6. Overtime

a. Overtime is all hours worked in excess of 40 hours in a seven (7) consecutive day work period beginning at 12:01 a.m. on Sunday and ending at 12:00 p.m. (midnight) on Saturday.

- Exception for Firefighters: All hours worked in excess of 106 hours in a fourteen (14) consecutive day work period
- Exception for Security Personnel: All hours worked in excess of 86 hours in a fourteen (14) consecutive day work period.

b. The use of overtime should be an exception to the regular work schedule and should only be required on an occasional basis.

c. Overtime Pay

(1) The Agency will not pay overtime to exempt employees.

(2) The Agency will pay nonexempt employees no less than one and one-half (1½) times their Regular Rate Of Pay for all hours worked over 40 hours in a workweek (see exceptions in paragraph 6.a.), or may grant Compensatory Time (see 7.b.(1)).

d. Adjusted Workweek. 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 an hour to avoid overtime.

e. The Department Head, Program Manager or their designated representative is responsible for the prior approval of overtime, and for administering the provisions of this policy in the best interest of the South Carolina Military Department. Department Heads/Program Managers will avoid the repetitive and chronic use of overtime.

f. Department Heads/Program Managers will not use or allow the use of unauthorized overtime. However, unauthorized overtime must be compensated. Employees and/or managers who use or allow the use of unauthorized overtime may be subject to the Agency's Progressive Discipline Policy.

g. When any department and/or individual is found to be consistently charging overtime, the Chief of Staff for State Operations or his designee will review the functions of that department and/or individual.

7. Compensatory Time

a. Exempt Employees

(1) Exempt employees may receive Compensatory Time for hours worked in excess of 40 hours in a workweek (see exceptions in paragraph 6.a.) at a rate of (1) hour of Compensatory Time for each hour worked in excess of 40 hours in the workweek, and may be at a lesser rate

(2) Under no circumstances shall an exempt employee accumulate more Compensatory Time than the FLSA allows for a nonexempt employee (240 hours).

(3) Exempt employees will not be paid for Compensatory Time upon separation of employment.

(4) Exempt employees cannot transfer Compensatory Time.

b. Nonexempt Employees

(1) The Agency may pay nonexempt employees overtime (see 6.c.(2)), or grant Compensatory Time at a rate of one and one-half (1½) hours for each hour of overtime worked.

(2) Nonexempt employees (other than Temporary employees) may accumulate up to 240 hours of Compensatory Time. A nonexempt employee with an accumulation of 240 hours of Compensatory Time must be paid for all overtime worked in excess of the 240 hours in the employee's next regular paycheck.

(a) Neither the management representative nor the employee can waive the requirements to pay overtime or grant Compensatory Time to nonexempt employees after 40 hours of work in a workweek.

(b) The Agency will pay nonexempt employees for unused compensatory time at a rate of compensation not less than the higher of:

- The average regular rate received by the employee during the last three years of the employee's employment, or
- The final regular rate received by the employee.

(3) Temporary employees will not receive Compensatory Time.

c. State Holidays

(1) Employees who are required to work on a State holiday will receive Holiday Compensatory Time credits in accordance with the State Human Resources Regulations.

(a) Employees will use Holiday Compensatory Time credits at a time negotiated upon by the employee and the employee's supervisor.

(b) The employee will use the oldest Holiday Compensatory Time credits first and must use the credits within ninety (90) calendar days.

(2) Exempt Employees

(a) Exempt employees who do not use their Holiday Compensatory Time credits within 90 days will forfeit those days.

(b) The Agency will not pay Exempt Employees for unused Holiday Compensatory Time under any circumstances.

(3) Nonexempt Employees

(a) Nonexempt employees who do not use their Holiday Compensatory Time credits within 90 days will be paid for those days.

(b) The Agency will pay Nonexempt Employees 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 nonexempt), or upon a nonexempt employee starting in an exempt position in the current agency.

(c) The Agency will pay nonexempt employees for unused compensatory time at a rate of compensation not less than the higher of:

- The average regular rate received by such employee during the last three years of the employee's employment, or
- The final regular rate received by such employee.

d. Impact of Status Change

(1) If a non-exempt Agency employee accepts a position that is considered exempt either within the Agency or with a separate State agency, the Agency will pay the employee for all accrued compensatory time prior to the employee starting in the exempt position.

(2) If a non-exempt Agency employee separates from employment or moves to another State agency, the Agency will pay the employee for all accrued compensatory time.

(3) The Agency will pay the compensatory time at a rate of compensation not less than the higher of:

- The average regular rate received by the employee during the last three years of the employee's employment, or
- The final regular rate received by the employee.

PROCEDURE

1. The State Human Resources Officer (State HRO) or his designee is responsible for determining and verifying exemptions from both the minimum wage and overtime pay requirements of the FLSA for any employee in a bona fide executive, administrative, professional, or computer position. All other employees are considered nonexempt.
2. The State HRO will advise the Department Heads/Program Managers of the FLSA determinations that apply to their employees.
3. The State HRO will update SCEIS as appropriate and ensure all employees are designated as either exempt or nonexempt.