



DEPARTMENT OF CORRECTIONS
Human Resources



Title:	Fair Labor Standards Act	DOC Policy: 20.2.4
Supersedes:	DOC Policy 20.2.4, "Fair Labor Standards Act," dated 07/15/98	
Applicability:	Classified (where not in conflict with collective bargaining agreements), management service, executive service and temporary employees	
Directives Cross-Reference:	Fair Labor Standards Act (FLSA), 29 C.F.R. 201-219, 500-899; FLSA Act Amendments of 1985; Bureau of Labor and Industries Handbook on Oregon Wage and Hour Laws. State Policy 20.005.20.	

I. PURPOSE

The Fair Labor Standards Act (FLSA) defines the duties of employees covered by the act (non-exempt) and the duties of employees not covered by the act (exempt), and establishes the criteria for overtime eligibility for non-exempt employees.

II. DEFINITIONS

A. Executives, managers or supervisors are exempt if the following conditions are met:

1. The employee shall supervise two or more employees, and
2. The employee shall have hiring and firing authority or be able to make recommendations that carry weight, and
3. The employee shall regularly exercise independent judgment and discretionary power, and
4. The employee's primary duty (more than 50 percent of work time) shall be the management of the enterprise or a department, and
5. The employee shall be paid on a salary basis.

B. Administrative employees are exempt if they meet the following conditions:

1. The employee shall perform responsible non-manual work directly related to management policies or business operations, or responsible work in the administration of a school, and
2. The employee shall regularly assist an executive, or perform work under only general supervision, and

3. The employee shall regularly exercise independent judgment and discretionary power, and
 4. The employee's primary duty (more than 50 percent of work time) shall be administrative, and
 5. The employee shall be paid on a salary basis.
- C. Professional employees are exempt if they meet the following conditions:
1. The employee shall perform work requiring an advanced type of knowledge usually obtained through a prolonged course of study, or
 2. The employee shall perform work that is original or creative in an artistic field, or work as a certified teacher or registered nurse; and
 3. The employee regularly exercises independent judgment and discretion, and
 4. The employee's primary duty (more than 50 percent of work time) shall be professional as set out in paragraph A. or B. above, and
 5. The employee shall be paid on a salary basis.
- D. Availability of budgeted funds means that payment for overtime is included in the department's legislatively approved budget (i.e., funds specifically for the purpose of compensating employees from which overtime cash payments can be withdrawn, not funds available generally).
- E. Occasional or sporadic means infrequent, irregular or occurring in scattered instances.
- F. Different capacity means employment that does not fall within the same general occupational category as regularly assigned duties.

III. POLICY

The department shall comply with provisions of the Fair Labor Standards Act (FLSA) and adopt by reference the Bureau of Labor and Industries Handbook on Oregon Wage and Hour Laws. Accordingly:

- A. Each supervisor, in consultation with a department's human resource consultant, shall determine the status of each employee, either exempt or non-exempt from the act, using FLSA guidelines, and keep accurate records of FLSA status, work week, and overtime. The Human Resources Division shall conspicuously post notices regarding the FLSA as required by the Wage and Hour Division of the U.S. Department of Labor.

- B. Exempt employees work a professional work week on a salaried basis and shall not be eligible for overtime unless authorized by a collective bargaining agreement. An exempt employee may work a flexible and/or irregular work schedule with supervisory approval.
- C. For exempt employees, accrued leave shall be used for partial day absences. If an exempt employee does not have sufficient appropriate paid leave accrued to cover the absence, the supervisor shall reduce the employee's salary for that portion of the absence not covered by paid leave.
- D. Non-exempt employees shall be eligible for overtime when time worked is in excess of 40 hours in a workweek. Lieutenants and Captains shall be eligible for overtime when time worked, including paid time off, is in excess of 8 hours in a day or 40 hours a week. Overtime shall be paid in cash at time and one-half if agency budgeted funds for the payment of overtime are available. If budgeted funds for the payment of overtime are not available, such overtime shall be allowed in compensatory time off at time and one-half with prior agreement of employee.
- E. Second job situations in state government
 - 1. For non-exempt jobs that have the same or similar job duties:
 - a. If a full-time department employee applies for a second state job, the hiring agency shall be responsible for any overtime pay liability. Therefore, the hiring agency may refuse to hire because of potential overtime pay liability.
 - b. If a part-time department employee applies for a second state job, the two agencies shall mutually agree on the employee's FLSA status and any overtime pay obligations. Generally, the state agency employing the employee at the time the employee exceeds 40 hours in a work week shall pay the overtime.
 - 2. For non-exempt jobs, a hiring agency may hire a department employee without overtime pay liability if the job is in a different capacity than the employee's regular job and the job is occasional or sporadic.
- F. Supervisors and managers are responsible for assigning work and work schedules, ensuring any overtime worked is authorized. FLSA requires payment for overtime even if overtime worked is unauthorized. Employees who work unauthorized overtime are paid for overtime worked

but, depending on the circumstances, may be subject to disciplinary action.

- G. If an employee performs work which is the same or similar to their regularly assigned job duties, it is considered time worked for computing overtime. In this circumstance, employees shall not volunteer their time.
- H. In limited instances when an exempt employee is required to perform the duties of a non-exempt position (for example, to replace a non-exempt employee on shift), the appointing authority may authorize overtime compensation for those hours in excess of 40 hours in the work week.

IV. IMPLEMENTATION

This policy shall be adopted immediately without further modification.