

SUBJECT: Fair Labor Standards Act (FLSA)	NUMBER: 20.005.20
DIVISION: Chief Human Resources Office	EFFECTIVE DATE: 12/30/2022

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT: Oregon state government shall comply with provisions of the Fair Labor Standards Act (FLSA) and Oregon Wage and Hour Laws.

AUTHORITY: ORS 240.145(3); 240.235; 240.240; 240.250; 240.551; 653.268; 653.269; OAR 839-020-0015, 839-020-0115; 839-020-0130, 839-020-0200 through 839-020-0350 Fair Labor Standards Act, 29 C.F.R, 201-219, 500-899; FLSA Act Amendments of 1985; Bureau of Labor and Industries Wage and Hour Laws Handbook

APPLICABILITY: All employees, when not in conflict with collective bargaining agreements, including limited duration and temporary employees

ATTACHMENTS: None.

DEFINITIONS: **Workweek:** 12:01 a.m., Sunday through 12:00 a.m., Saturday

Also refer to State HR Policy 10.000.01, Definitions

POLICY:

- (1) Agencies are required to comply with both federal and state laws. When standards under one law differ from those under the other, the standards most generous to the employee must be met. For example, if the state minimum wage is higher than the federal minimum wage, the state minimum wage must be paid. Likewise, if an employee qualifies as exempt under state law but not under federal law, the agency must comply with federal law. Accordingly:

- (a) The appointing authority shall determine the status of each employee, either exempt or non-exempt from overtime, using Department of Labor (DOL) and Bureau of Labor and Industries (BOLI) guidelines, and keep accurate records of FLSA status, work week and overtime. Each appointing authority shall conspicuously post notices regarding wage and hour laws as required by the DOL and BOLI.

- (b) Exempt employees work a professional workweek on a salaried basis and shall not be eligible for overtime. An exempt employee may work a flexible and/or alternate work schedule with supervisory approval.

- (c) Appointing authorities shall ensure any deduction made to an exempt employee's pay is appropriate. Unlawful deductions are prohibited. Exempt employees who believe an improper deduction has been made from their pay may submit a written complaint to their agency payroll or human resources office. The agency shall respond to the complaint within 15 calendar days of receipt. If the agency finds the deduction to be improper it will reimburse the employee for the deduction. If the agency and employee do not agree about the deduction, the agency shall contact the CHRO Classification and Compensation Unit for assistance.
- (d) For exempt employees, accrued leave shall be used for partial day absences due to personal reasons or because of illness or injury. If an exempt employee does not have sufficient appropriate paid leave accrued to cover the absence, the appointing authority shall reduce the employee's salary for that portion of the absence not covered by paid leave.
- (e) Non-exempt employees shall be eligible for overtime when time worked is in excess of 40 hours in a workweek. Overtime shall be compensated 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 the employee. The maximum number of hours that may be accumulated for compensatory time is 240 hours (480 hours for seasonal workers, fire, police and emergency response personnel). Overtime must be compensated when the maximum is reached. Agencies may establish their own policy setting a lower limit on the number of hours employees may accrue. At termination, compensatory time is cashed out at the higher of the employee's final regular rate, or the average regular rate during the last three years of employment.
- (f) Second job situations in state government:
 - (A) The state usually must pay overtime for non-exempt employees who work in two or more positions in one or more state agencies, if the employee works in excess of 40 hours in a workweek.
 - (i) If a state employee, working full time for one agency, applies for a second state job, the second hiring agency shall be responsible for any overtime pay liability. However, the second hiring agency may refuse to hire the employee because of potential overtime pay liability.
 - (ii) If a state employee, working part time for one agency, applies for a second state job, the two agencies shall mutually agree on the employee's FLSA status and any overtime pay obligation. Generally, the state agency employing the employee at the time the employee exceeds 40 hours in a work week shall pay the overtime.
 - (B) For non-exempt jobs, a hiring agency may hire a state employee without overtime pay liability if the following exceptions apply: (The exceptions require a fact-specific legal analysis. Contact DOJ Labor and Employment if you think these exceptions could apply.)

- (i) Under the FLSA, the employee's second position is in a different capacity than the first position, and is undertaken on an occasional or sporadic basis, solely at the employee's option; or
 - (ii) Under the FLSA, the employee's second job is for a different state agency under circumstances where the two state agencies would be considered separate and not joint employers; and
 - (iii) Under Oregon law, the collective bargaining agreement expressly waives application of ORS 653.268.
- (g) 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 must be compensated for overtime worked but, depending on the circumstances, may be subject to disciplinary action.
- (h) 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. State agencies shall not allow employees to volunteer to do the same work for which the employee is paid. If an agency allows an employee to volunteer time under such circumstances, it will result in an overtime liability.

(2) Policy Clarification:

- (a) "Availability of budgeted funds" means payment for overtime is included in the agency'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.
- (b) "Occasional or sporadic" means infrequent, irregular or occurring in scattered instances.
- (c) "Different capacity" means employment that does not fall within the same general occupational category as regularly assigned duties.