

FAIR LABOR STANDARDS ACT
CHANCELLOR'S GUIDELINES FOR
OVERTIME WORK BY NONEXEMPT COLLEGE EMPLOYEES

Definition of Non-Exempt Employee

Nonexempt employees are employees whose positions do not meet the FLSA tests for exemption from the overtime provisions, and the employee must be compensated for overtime. The FLSA includes provisions that are applicable to all employers employing covered employees, including the requirements relating to the posting of notices, the preservation and location of records, and the record keeping requirements for employers of employees to whom both the minimum wage provisions or the minimum wage provisions and the overtime pay provisions of the Act apply. Nonexempt employees perform work, other than that performed by bona fide executive, administrative, or professional employees (including academic administrative personnel) and the activities directly and closely related to such work. Where it is more difficult to determine the status of a particular employee, a careful analysis of the employee's duties that are directly and closely related to the work described as executive, administrative, or professional will usually be necessary in arriving at a satisfactory determination of the employee's status. Job descriptions and employment conditions should be periodically reviewed to ensure that the status of an employee is current with the provisions of the Act.

When a Nonexempt Employee May Be Required to Work Overtime

- A. A nonexempt employee may, upon mutual agreement of the employee and college, work more than forty (40) hours during a workweek. (*Appendix S*)
- B. A nonexempt employee may be required to work more than forty (40) hours in any workweek if (a) the college directs the employee to do so, and (b) an "emergency condition" exists. For purposes of this procedure, an "emergency condition" exists if in the opinion of the college president one or more of the following is present:
 - 1. A situation which endangers or potentially will endanger the physical, mental, or emotional health or safety of property for which the college is ultimately responsible, and the performance of overtime work would or reasonably may be expected to contribute to the reduction of said danger or perceived danger.
 - 2. A situation in which the performance of necessary overtime work will increase the effectiveness of college registration, enrollment, orientation, graduation, or commencement activities, but under such circumstances that a given employee shall not be required to work overtime unless the college has previously taken reasonable action to obtain the services of all other qualified employees who were willing and able to

voluntarily perform services of the nature of the work required of the employee.

3. A situation in which the performance of overtime work will or may reasonably be expected to significantly contribute to the success of college goals or efforts to obtain college or program accreditation from recognized accreditation agencies or organizations, but under such circumstances a given employee shall not be required to work overtime unless the college has previously taken reasonable action to have the work performed during normal working hours and determined that reasonably good planning would not have ensured the timely performance of the work so as to avoid an "emergency" concerning accreditation; or
 4. A situation in which the performance of overtime work is reasonably necessary in order for the college to respond to the legal directives of governmental agencies or bodies which are "external" to the State Board of Education, or any Alabama state college; i.e., a situation where there is a need for assistance in retrieving court-ordered documents.
- C. As an alternative to requiring an employee to work more than forty (40) hours during a workweek in which an emergency situation exists, the college 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)

Nonexempt Employees - Holidays and Weekends

- A. Any employee whose workweek does not ordinarily include a Sunday and who works on a Sunday shall be compensated at the rate of one and one-half (1 ½) times his or her normal rate for each hour worked on the given Sunday. This rate shall apply whether or not the workweek exceeds forty (40) hours.
- B. Any employee who works on a holiday on which the employee would ordinarily be entitled to be off shall be compensated at the rate of two (2) times his or her normal rate for each hour worked on the holiday. Provided that, if the employee shall work the holiday and take off another day during the same workweek as an alternative to taking the holiday off, then the employee shall be entitled to only his or her normal rate of pay for all hours actually worked or taken as an alternative holiday during the subject workweek. In a situation where an employee is required by the respective college to work on a holiday on which the employee would ordinarily be entitled to be off, it shall be the discretion of the employee to take an alternative day off during the same workweek, unless the employee is disallowed by the employing college to take an alternative holiday due to an emergency condition as defined by Section II, hereof.

(References: 29 CFR 778.201; 29 CFR 778.203)

Use of Compensatory Time Off

An employee who has earned compensatory time off and requests to use such time shall be permitted by the college to use such time within a "reasonable period" subsequent to the request if the granting of such request does not "unduly disrupt" the operations of the college. Mere inconvenience is not considered to be unduly disruptive. However, a request to use compensatory time at the beginning of an academic quarter or semester, or to use such time during a period of final examinations or grades, may be unduly disruptive regardless of when the request is made.

Employees Working Two Or More Types of Jobs

- A. In a situation where an employee's normal employment involves two or more different types of non-exempt work with the same college, the hours worked in both types of work shall count toward the determination of whether the employee has worked more than (40) hours in any workweek.
- B. In the event the different assignments are subjected to different rates of pay, then the rate of pay for those hours worked over forty (40) shall be calculated on the basis of one and one-half (1 ½) times a "regular hourly rate" consisting of the weighted average of the hourly rates for both (or all) types of work assignments, or, in the alternative, the employee and the college may agree in advance that any overtime work shall be compensated on the basis of the one and one-half (1 ½) times the appropriate rate for the type of work performed after the forty-hour point is reached.
- C. The above provision shall not apply where an employee voluntarily chooses to work, on an occasional, temporary, or sporadic basis, a job in addition to, and different from, his or her normal work assignment. For example, if a bookkeeper works forty hours in his or her regular job then voluntarily works an additional fifteen hours during the same week painting the gymnasium, the fifteen hours spent painting would not be considered overtime, and the employee would be compensated at whatever rate is appropriate for that job. On the other hand, if a secretary is called upon to work as part of a registration team in addition to her normal forty hour workweek, that work assignment would be considered subject to overtime, even though occasional, if it consisted of clerical activities. The rationale for considering the secretary's additional hours as overtime is that they fail to pass the test with respect to being different in nature from the employee's normal duties, since both sets of activities would be clerical in nature.

(Reference: 29 CFR 778.115; 29 CFR 778.419)

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).

Options for Compensation

- A. When a president or an authorized designee has determined that a need for overtime work exists, he/she shall make a request to the respective employee or employees to work overtime (for a given day or days or for the workweek). Before an employee shall agree to perform such overtime work, the president/designee shall make the employee aware of which types of compensation and/or alternative scheduling shall be available to the employee. The employee shall make it known to the president/designee which of the option presented by the president/designee the employee has selected regarding how such overtime will be treated, and the employee's selection shall be honored by the respective college. The options which are to be made available to the employee shall be from among, but need not necessarily include all of, the three options described below:
1. The employee will receive compensatory time at one and one-half (1 ½) times the rate of actual overtime hours worked for the workweek. For example: if an employee works four (4) hours of overtime, he/she will receive six (6) hours of compensatory time which can be used at employee's discretion. (See also, use of compensatory time off.)
 2. The employee shall receive overtime pay at one and one-half (1 ½) times his/her normal hourly rate for each hour of overtime work performed for the workweek. For example, if an employee's normal hourly rate computes to \$5.00 per hour, he/she will receive \$7.50 for each hour of overtime work performed.
 3. If an employee works hours beyond the normal number of hours for a given workday or workdays, the employee may choose to decrease the number of hours worked in another workday or workdays in that same workweek on an hour-for-hour basis, so long as reduction does not cause an undue disruption to the normal operation of the college and so long as the total number of hours worked during the week is not less than that which would have ordinarily been worked by the employee during a workweek.

The employee shall nevertheless be entitled appropriate overtime compensation in the event that the total number of work hours for the workweek exceeds forty (40).

- B. However, except in emergency conditions, as defined in Section II hereof, the president/designee cannot require the employee to adjust his or her work schedule so as

to use additional work hours during the same workweek as the overtime work is performed. This option shall be at the discretion of the employee, subject to the exceptions stated above. No employee shall ever be compelled or forced by a college to adjust his or her work schedule as described above except during an emergency condition as described in Section II hereof.

(References: 29 USCA sec. 207(o); 29 CFR 778.100; 29 CFR 778.113)

Leave and Holidays

Paid time off attributable to a holiday, or to sick, annual, personal leave, or other forms of paid leave is to be treated the same with respect to computing the total number of hours worked during a workweek. Hours taken off for a holiday or as sick, annual, personal, or other paid leave will be counted as hours worked in determining whether or not forty (40) work hours were exceeded during a given workweek.

Compensatory Time Off

- A. If an employee receives entitlement to compensatory time off in lieu of overtime pay in cash, the employee shall be permitted to use accrued compensatory time within a reasonable period after it is requested if to do so would not unduly disrupt the operations of the employing institution.
- B. The maximum compensatory time which may be accrued by an affected employee shall be 240 hours (160 hours actually worked). An employee shall be paid overtime compensation in cash for additional overtime hours of work.
- C. Payment for accrued compensatory time upon termination of employment shall be calculated at the average regular rate of pay for the final three (3) years of employment, or the final regular rate received by the employee, whichever is higher.

(Reference: 29 USCA sec. 207(o))

Time Sheet

A time sheet shall be completed for all nonexempt employees, to record hours worked, sick leave, annual leave, personal days, and holiday time. 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.