Policy 4.40
Fair Labor Standards Act (FLSA)

Responsible Official: VP for Human Resources
Administering Division/Department: Compensation
Effective Date: May 07, 2007
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Overview

OVERVIEW AND PURPOSE
The Fair Labor Standards Act (FLSA) is a federal statute that regulates wage and hour issues including child labor, minimum wage, number of hours in a standard workweek, overtime pay, and record-keeping.

Policy Details

II. EMPLOYMENT OF MINORS
Emory will not employ anyone under the age of 16. No one under the age of 18 will be employed in any job deemed hazardous by the Human Resources Division. These include roofing, operation of hoists (forklifts), elevators, vehicles, or commercial food service machines; saws shears or other power-driven tools, and jobs involving exposure to hazardous materials.

III. MINIMUM WAGE AND MINIMUM PAY RATE
The University will pay at least the Federal minimum wage - currently $7.25 per hour. For staff positions, Emory University pays a higher rate than the Federal minimum wage. This rate is included in the salary structures posted on the Human Resources web site.

IV. WORKWEEK
   a) A workweek is defined as a regularly recurring period of 168 hours, comprised of seven consecutive 24-hour periods. Emory University's workweek begins at midnight on Sunday and ends on the following Saturday at midnight.
   b) If a night shift overlaps the end of one workweek and the beginning of the next workweek, then hours worked should be recorded in the work day/week in which the shift began.

V. HOURS WORKED
   a) Hours worked include all the time an employee is required or permitted to be on duty on the employer's premises or at a prescribed workplace.
b) FLSA does not consider meal periods to be hours worked. Emory University generally recognizes meal periods as unpaid time if an employee is completely relieved from duty for a period of at least 30 minutes. Short work breaks, usually 5 to 15 minutes, are considered as paid work time. Employees are expected to take a meal break and should not routinely skip meal breaks in order to shorten their scheduled work hours.

c) The customary hours of work for the University are from 8:00 a.m. until 5:00 p.m., including a 1-hour lunch period; however, hours may vary in certain departments due to the business need to operate 24 hours per day or to be open earlier or later than is customary.

d) Individual work schedules are set by an employee's supervisor, based upon hours of operation and work requirements of the unit.

e) Hours that an employee is “on call” after customary hours, off Emory premises, and only required to be reached by phone or beeper, are not considered hours worked. For information on on-call and call-back pay for nonexempt staff, refer to policy 4.47 (On-Call and Call-Back Pay).

VI. FLSA EXEMPTION

a) Emory University is covered by the FLSA, subject to all substantive provisions outlined in section I. The Compensation department is responsible for (1) determining if a job classification satisfies one of the FLSA exemption tests outlined in section VII and (2) determining if an employee in an exempt job classification may be considered exempt (i.e., meets the salary basis test outlined in section VII(A).

b) FLSA exemption or applicability is based on the duties and responsibilities of the job, the required qualifications and the salary received. Exempt employees must be paid on a salaried basis, which ordinarily is not variable by hours worked. The FLSA prohibits salary deductions for exempt employees except under narrow circumstances described in policy 4.61 (Salary Deductions). Exempt employees are not eligible to receive overtime pay.

VII. EXEMPT CATEGORIES. The FLSA identifies four relevant categories appropriate for Emory University: executive, administrative, professional, and computer. Note, Emory does not employ outside sales staff.

A. SALARY BASIS REQUIREMENT

i. To qualify for any exemption, employees generally must be paid at not less than $455 per week on a salary basis, which is equivalent to $23,660 per year, or $1,971.67 per month, regardless of FTE. These salary requirements do not apply to academic faculty or employees practicing law or medicine.

ii. Computer employees may be paid at least $455 on a salary basis or on an hourly basis at a rate not less than $27.63 per hour or $57,470 per year or $4,789.20 per month.

B. EXECUTIVE EXEMPTION. To qualify for exemption as an executive, all of the following tests must be met:

i. Satisfy the salary basis requirement, as explained in section VII (A); and

ii. The employee's primary duty must be managing the
enterprise, or managing a customarily recognized department or subdivision of the enterprise; and

iii. Must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and

iv. Must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

C. **Administrative Exemption.** To qualify for exemption as an administrative employee, all of the following tests must be met:

i. Satisfy the salary basis requirement, as explained in section VII (A); and

ii. The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and

iii. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

D. **Professional Exemption.**

i. To qualify for exemption as a **learned professional**, all of the following tests must be met:

a) Satisfy the salary basis requirement, as explained in section VII (A); and

b) The employee’s primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment; and

c) Advanced knowledge must be in a field of science or learning; and
d) Advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

ii. To qualify for exemption as a **creative professional**, all of the following tests must be met:

a) Satisfy the salary basis requirement, as explained in section VII (A); and

b) Employee’s primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

E. **Computer Employee Exemption.** To qualify for exemption as a computer employee, all of the following tests must be met:

i. Satisfy the salary basis requirement, as explained in section VII (A); and
ii. The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below; and

iii. The primary duty must consist of:

a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or

b) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or

c) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

d) A combination of the aforementioned duties, the performance of which requires the same level of skills.

VIII. OVERTIME

a) Non-exempt employees are paid on an hourly basis and are entitled to overtime pay at one and one-half times their regular rate of pay for any hours they work in excess of 40 during the workweek. Regular rate of pay is defined as the calculated average hourly rate for that workweek, including such premiums such as shift differential, "on call" pay, bonuses, and additional rates of pay, as applicable.

b) For non-exempt employees, time worked in excess of the regularly scheduled 40 hours should be limited to urgent requirements which cannot be satisfactorily completed in another manner. Overtime hours should not be used routinely to complete regular job responsibilities.

c) Emory University policy requires that overtime must be authorized in advance by the appropriate department head or supervisor. This includes such activities as performing work from home and responding to work-related emails and voicemails. In addition, any work done outside the usual office/workspace environment must be acknowledged and approved by the manager in advance.

d) A non-exempt employee must be paid for all hours that Emory University suffers or permits the employee to work. Employees who work overtime without obtaining prior authorization may be subject to disciplinary action, up to and including dismissal, for violating University Standards of Conduct policy.

e) Overtime payments must be computed on the basis of hours actually worked during a single workweek, as recorded through the time and attendance system. Holidays, vacation, sick, and other leave benefits are paid but not worked. Therefore, these benefits are not considered to be hours worked for the purpose of overtime calculation.

f) FLSA establishes the “workweek” as the timeframe for determining overtime, and each workweek stands alone. Work time may not be "averaged" from workweek to workweek to avoid the payment of overtime. For example, an employee who works 44 hours in the first week of a pay period, and 36 hours in the second week, is entitled to 4 hours of overtime pay for week one and may not be paid based on an "average" of 80 hours for the two week
period.

g) Required overtime pay for one workweek may not be avoided by granting time off in another week (see Section IX). However, an employee’s schedule may be adjusted within a workweek to avoid overtime. For example, if a nonexempt employee works 10 hours on Monday, the manager may reduce the employee’s work schedule by 2 hours on Friday so that hours actually worked in the workweek do not exceed 40.

h) Exempt employees are not paid for hours worked in excess of 40 hours per workweek.

IX. COMPENSATORY TIME. A non-exempt employee may not elect to waive payment of overtime or receive compensatory time off in lieu of the payment of overtime.

X. BREAK TIME FOR BREASTFEEDING
Supervisors are required to provide employees who are nursing mothers a reasonable break or period of time when necessary to express breast milk for a nursing child. This right shall be in place for up to one (1) year after the birth of the child. According to federal law, employers are required to provide an area that is secluded and secure for such employees, during the period of the aforementioned allowance, for the sole purpose of expressing breast milk. Emory manages several dedicated lactation rooms across campus. For more information on locations and Emory’s official policy on lactation support, see policy 4.91 (Lactation Support Program).

XI. RECORD KEEPING.

a) It is the joint responsibility of departmental management, Human Resources Data Services, and Payroll to accurately maintain the following records required by FLSA for non-exempt employees:

1. Employee's full name and social security number. (Human Resources Data Services)
2. Address, including zip code. (Human Resources Data Services)
3. Date of birth. (Human Resources Data Services)
4. Gender and Job Title. (Human Resources Data Services)
5. Time and day of week when employee's workweek begins. (Human Resources Data Services)
6. Hours worked each day. (Payroll)
7. Total hours worked each workweek. (Payroll)
8. Basis on which employee's wages are paid (e.g., "$12 an hour", "$480 a week", etc.) (Human Resources Data Services)
9. Regular hourly pay rate. (Human Resources Data Services)
10. Total daily or weekly straight-time earnings. (Payroll)
11. Total overtime earnings for the workweek. (Payroll)
12. All additions to or deductions from the employee's wages. (Payroll)
13. Total wages paid each pay period. (Payroll)
14. Date of payment and the pay period covered by the payment. (Payroll)
b) Payroll records must be maintained for at least three years. Records on which wage computations are based must be retained for two years, i.e., time and attendance records, work schedules, and records of additions to or deductions from wages.

Related Links

- Current Version of This Policy: http://policies.emory.edu/4.40

Contact Information

<table>
<thead>
<tr>
<th>Subject</th>
<th>Contact</th>
<th>Phone</th>
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</thead>
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Revision History

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