Policy 4.40
Fair Labor Standards Act (FLSA)

This policy version was not current at the time of printing. Please see http://policies.emory.edu/4.40 for the current version.

Responsible Official: VP for Human Resources
Administering Division/Department: Compensation
Effective Date: May 07, 2007
Last Revision: July 28, 2008

Policy Sections:

I. Overview
II. Policy Details
III. Related Links
IV. Revision History

Overview

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

Policy Details

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, the 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.

MINIMUM WAGE
The University will pay at least the Federal minimum wage, currently $6.55 per hour.

WORKWEEK
A workweek is defined as a regularly recurring period of 168 hours, comprised of seven consecutive 24-hour periods. The University's workweek begins at 12:00 a.m. on Sunday and ends on the following Saturday at midnight.

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.

HOURS WORKED
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.

The FLSA does not consider meal periods to be hours worked. The 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 worked time.
Fulltime employees typically are expected to take a meal break and should not repeatedly skip meal breaks in order to shorten their scheduled work hours.

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, this 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 standard.

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

Hours that an employee is "on call" off the employer's premises, and only required to be reached by phone or beeper, are not considered hours worked.

**EXEMPT AND NON-EXEMPT STATUS**

University employees covered by the FLSA are subject to its overtime and record-keeping requirements, unless exempted by specific statutes. Human Resources Compensation is responsible for determining which job classifications satisfy the FLSA exemption tests.

Exempt status is based on the duties and responsibilities of the job, the required qualifications and the salary received. Most exempt employees must be paid on a salaried basis, which ordinarily is not variable by hours worked. The FLSA prohibits salary reductions for partial day absences for exempt employees, except under very limited circumstances. Exempt employees are not eligible to receive overtime pay.

**SALARY BASIS REQUIREMENT**

To qualify for exemption, employees generally must be paid at not less than $455 per week on a salary basis. These salary requirements do not apply to teachers and employees practicing law or medicine. Exempt 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 an hour.

**EXEMPT CATEGORIES**

The FLSA identifies five exempt employee categories: executive, administrative, professional, computer and sales. Emory University has jobs that fall into the following four categories:

**EXECUTIVE EXEMPTION**

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis at a rate not less than $455 per week;
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee 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.

**ADMINISTRATIVE EXEMPTION**

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis at a rate not less than $455 per week;
- 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
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

**PROFESSIONAL EXEMPTION**
To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis at a rate not less than $455 per week;
- 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;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis at a rate not less than $455 per week;
- The 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.

**COMPUTER EMPLOYEE EXEMPTION**

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated either on a salary or fee basis at a rate not less than $455 per week or, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
- 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;
- The employee’s primary duty must consist of:
  1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  2. 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;
  3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

**OVERTIME**

Non-exempt employees may be paid on an hourly basis and are entitled to overtime pay at one and one-half times their regular hourly rate for any hours they work in excess of 40 during the workweek. Regular hourly rate is defined as the calculated average hourly rate for that pay period, including such items as shift differentials, “on call” pay, and additional rates of pay, if applicable.

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. Emory University policy requires that overtime must be authorized in advance by the appropriate department head or supervisor; however, 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 will be subject to disciplinary action, up to and including dismissal, for violating University policy.

Non-exempt employees must be paid one and one-half times their regular hourly rate (as defined above) for any verifiable hours worked in excess of 40 during the official University workweek.
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 leave, emergency leave and other hours paid but not worked are not considered to be hours worked for the purpose of overtime calculation.

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. Required overtime pay for one workweek may not be avoided by granting time off in another week.

However, an employee's schedule may be adjusted within a workweek to avoid overtime. For example, if a nonexempt employee works 44 hours in the first week of a pay period, and 36 hours in the second week, 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.

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

**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.

**RECORD KEEPING**
It is the joint responsibility of departmental management, Human Resources, 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. Birth date. (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)

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

Revision History

Emory University policies are subject to change at any time. If you are reading this policy in paper or PDF format, you are strongly encouraged to visit policies.emory.edu to ensure that you are relying on the current version.