

<b>UTAH DEPARTMENT OF HUMAN SERVICES POLICY AND PROCEDURES</b>		
<b>Reference: 02-15</b>	<b>Effective Date: July 18, 2001 Revision Date: August 21, 2007</b>	<b>Page 1 of 8</b>
<b>SUBJECT: OVERTIME AND EXCESS HOURS</b>		
<b>RATIONALE: The purpose of this policy is to alert the employees of the Department of Human Services about the state and federal laws that govern overtime and excess hours, and to establish procedures that comply with those laws and that will ensure that the Department uses overtime and excess hours efficiently, economically and within existing budgets.</b>		

## INTRODUCTION

The federal Fair Labor Standards Act ("FLSA") establishes numerous standards about employee working conditions and compensation, including compensation for overtime hours. (See 29 U.S.C. §201 *et seq.*) Compliance with the FLSA is crucial because noncompliance can result in *triple damages* for the Department and in disciplinary action for managers, supervisors or other employees who violate the FLSA. The State of Utah has also adopted important policies about the use of overtime and excess hours. These policies are articulated in Section 67-19-6.7 of the Utah Code and in Department of Human Resource Management (DHRM) Rule, R477-8-5.

## POLICY

The Utah Department of Human Services (the "Department") shall comply with all federal and state statutes and rules, policies and procedures about the accrual, compensation, and use of overtime and excess hours. For example, the Department shall comply with the FLSA, with Section 67-19-6.7 of the Utah Code, and with any rules, policies and procedures adopted by the Utah Department of Human Resource Management.

**This policy establishes the presumption that overtime is the exception to the rule. Therefore, before any Department employees work overtime or excess hours, they must first obtain approval from their immediate supervisors, except as otherwise provided in this policy. Agency management may prior approve overtime or excess hours only if allowing the employee to work those extra hours is efficient and economical, and if the compensation for the extra hours is funded within the agency's budget. Agency management may not authorize or permit any Department employee to work any time for the Department without compensation.**

Department employees, including supervisors and other members of agency management, who violate the FLSA or any other laws which govern the use of overtime or excess hours (including this policy and DHRM Rule R477-8-5) may be subject to disciplinary action.

## DEFINITIONS

**Agency Management:** The designated officer (such as a supervisor, manager or other official) who has the responsibility and authority to approve overtime and excess hours.

**Compensable Hours:** The time for which an employee is entitled to compensation. Compensable hours include any combination of the following: actual hours worked, accrued or administrative leave time, compensatory time, excess hours, and holidays. (Compare "Compensatory Time," defined below.) An employee must record work in increments of 15 minutes to receive pay for hours worked and overtime hours worked.

**Compensatory Time (sometimes called "Comp Time"):** Time off that is provided to an employee in lieu of monetary overtime compensation. (See DHRM Rule R477-1-1.)

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**Excess Hours:** A category of compensable hours separate and apart from compensatory time or overtime hours. Excess hours accrue at straight time only when the hours that an employee actually worked, plus any additional hours for which the employee was paid but which the employee did not actually work, exceed the hours in the employee's normal work period. (See DHRM Rule R477-1-1.)

**FLSA:** Fair Labor Standards Act, the federal statute that governs overtime. (See 29 U.S.C. §201 *et seq.*)

**FLSA Exempt Employee:** An employee who is exempt from the overtime and minimum wage provisions of the federal Fair Labor Standards Act. An "FLSA Exempt Employee" is generally a person who is employed in an executive, administrative or professional capacity. (See 29 U.S.C. §213 of the FLSA.) The determination of this statutory exemption is made by the Utah Department of Human Resource Management based on whether the work performed by the employee meets the statutory criteria for an exemption. (Compare "FLSA Non-Exempt Employee," defined below.)

**FLSA Non-Exempt Employee:** An employee who is covered by the overtime and minimum wage provisions of the federal Fair Labor Standards Act. (See 29 U.S.C. §213 of the FLSA). Compare "FLSA Exempt Employee" (preceding definition).

**Overtime:** Actual time worked in excess of the employee's defined work period. (See Utah Code Ann. §67-19-6.7, and the definition of "Work Period" below.)

**Overtime Year:** The year at the end of which an FLSA exempt employee's accrued but unused compensatory time will lapse. (See Utah Code Ann. §67-19-6.7). The date of the overtime year is determined by the Department of Human Services in compliance with state statutes and rules. The Department's overtime year concludes at the end of payroll period 10.

**Work Period:**

- (1) For FLSA *non-exempt* employees, the work period is a 40-hour workweek within a consecutive seven-day period.
- (2) For all FLSA *exempt* employees, the work period is a consecutive 14-day, 80-hour pay period.

**PROCEDURES**

**1. "Overtime Compensation Election/Agreement" Form**

- A. FLSA non-exempt employees. Before working any overtime, each FLSA non-exempt employee shall complete and sign an "Overtime Compensation Election/Agreement" form, in which the employee notifies agency management which of the following types of overtime compensation the employee elects to receive:

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(i) monetary payment, at the rate of one and a half times the employee's regular hourly rate; or

(ii) compensatory time off at time and one-half.

FLSA non-exempt employees who want to change their overtime election may do so only once a year during the month of January by filing a new "Overtime Compensation Election/Agreement" form with their supervisors. The employee's supervisor shall then forward the form to the assigned human resource liaison who shall take the appropriate action to implement the change.

B. FLSA exempt employees. The "Overtime Compensation Election/Agreement" form is *not* appropriate for use with FLSA exempt employees.

## 2. **Approval of Overtime and Excess Hours**

- A. Agency management shall not direct any employee to work any hours for the State without compensation.
- B. Agency management shall not direct any employee to work or conduct State business while that employee is on leave or on a holiday.
- C. Before working any overtime or excess hours, each Department employee shall first obtain approval from agency management, *unless*:
- (i) the overtime or excess hours are clearly necessitated by an emergency situation or a situation that affects significant interests of the Department or its clients; and
  - (ii) obtaining prior approval from agency management is impossible or infeasible; and
  - (iii) agency management has not previously advised the employee that overtime or excess time are inappropriate in such situations.
- D. If an employee works overtime or excess hours without prior approval, agency management shall review the situation and shall determine whether the employee's failure to obtain prior approval was justified under the terms of Paragraph (2)(C) above.
- E. Agency management shall not prior approve any overtime or excess hours unless agency management determines that having the employee work those hours is efficient and economical and that the overtime hours and excess hours are funded within the agency's budget.

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- F. Unless otherwise authorized by this policy, FLSA non-exempt employees shall not exceed 40 compensable hours during a work period, and FLSA exempt employees shall not exceed 80 compensable hours during a work period.

**Important Note:** If agency management authorizes an FLSA non-exempt employee to work 44 hours during the first week of the pay period and to then only work 36 hours during the second week of the pay period, this arrangement will violate the FLSA unless the employee receives overtime compensation for the extra 4 hours that the employee worked during the first week.

- G. Employees who work overtime or excess hours in violation of this policy shall be compensated for the time worked, but they may be disciplined by agency management.
- H. Members of agency management who violate the provisions of this policy or other state and federal laws about overtime and excess hours may be subject to discipline.

**3. Completion and Approval of Time Sheets**

- A. All Department employees (whether FLSA exempt or FLSA non-exempt) shall complete a State-approved bi-weekly electronic or paper time sheet to document all compensable hours (e.g., hours worked, used leave and compensatory time, holidays, and on-call time earned) for each day within the work period. Employees shall record all compensable hours on their time sheet corresponding to the day the hours were worked or leave taken. Employees shall accurately complete or electronically record their time sheets within the required time frames.

**Important Note:** All time worked by an employee must be accurately recorded on the State-approved electronic or paper time sheet. It is a violation of federal and state law for the employee to work but not record the time on the timesheet, or to record time that was not actually worked. Under no circumstances may employees or agency management keep "side records" of hours worked but not recorded on the State-approved time sheet.

- B. Agency management shall deny the use of any leave time (other than holiday leave) that results in an employee's accruing excess hours.

**4. Overtime and Compensatory Time: Eligibility, Usage, and Payout**

- A. Overtime Compensation for FLSA Non-Exempt Employees: FLSA non-exempt employees are eligible for overtime compensation when they actually work more than 40 hours in a work period. For the purpose of calculating overtime compensation, leave, on-call time, and holiday time do *not* count as hours worked during the work period.
  - (i) FLSA non-exempt employees who elect (in their "Overtime Compensation Election/Agreement") to be compensated for overtime with compensatory time

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may earn a maximum of 80 hours of compensatory time. The Department shall compensate the employee for those overtime hours in excess of the 80-hour limit by making a monetary payment at the rate of one-and-a-half times the employee's regular hourly rate. This monetary payment shall be made on the regular payday for the work period in which that overtime was earned.

- (ii) FLSA non-exempt employees who elect (in their "Overtime Compensation Election/Agreement") to be compensated with compensatory time are not eligible to receive monetary payment for their overtime or excess hours, unless:
  - a) the monetary payment is authorized by the director of the division, office, or institution for which the employee works; and
  - b) the director first consults with the DHRM Field Office about the proposed payment, and the DHRM Field Office determines that the proposed monetary payment is appropriate, based on considerations such as consistency, equity, and compliance with state and federal laws, including this policy.

For purposes of paragraph a), the term "division" refers to one of the following Divisions of the Department: Aging and Adult Services, Child and Family Services, Juvenile Justice Services, Services for People with Disabilities, or Substance Abuse and Mental Health. The term "office" refers to one of the following Offices in the Department: Executive Director, Fiscal Operations, or Recovery Services. The term "institution" refers to the Utah State Hospital or the Utah State Developmental Center.

- B. Overtime Compensation for FLSA Exempt Employees: FLSA exempt employees shall be eligible for compensatory time at the rate of one hour off for each hour they actually work beyond the standard 80-hours in a work period. For the purpose of calculating overtime, leave, on-call time, and holiday time used within the work period shall not count as hours worked.
  - (i) Compensatory time earned by FLSA exempt employees is not an entitlement, a vested right or a benefit.
  - (ii) Any compensatory time earned but not used by FLSA exempt employees shall lapse at the end of the Department's overtime year (at the end of payroll period 10), or when the employee transfers to another department, terminates, retires, or otherwise does not return to work by the end of the overtime year.
  - (iii) FLSA exempt employees shall receive monetary payment only for earned compensatory hours that exceed 80 hours of earned compensatory time. Compensatory time earned beyond a base of 80 hours shall be paid down to 80 in the work period in which it was earned.

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- C. Compensatory Time for Directors: Notwithstanding any other provision to the contrary, overtime hours worked by the Department's executive, deputy, and division directors shall not be compensated with monetary payment, regardless of the amount of the director's accrued compensatory hours.
- D. Prompt Use of Compensatory Time: Agency management shall arrange for an employee's use of compensatory time as soon as possible, without unduly disrupting agency operations or endangering public health, safety, or property.

**5. Excess Hours: Eligibility, Usage, and Payout**

- A. Excess hours accrue at straight time only when the hours actually worked by an employee, plus any holiday hours for which the employee was paid but for which the employee did not actually work, exceed the number of hours in the employee's normal work period. Agency management shall deny the use of any leave time (other than holiday leave) that results in an employee accruing excess hours.

Example 1: An FLSA non-exempt employee with a 40-hour work period is paid for holiday leave during a particular week:

Monday	8	holiday leave
Tuesday	8	hours worked
Wednesday	8	hours worked
Thursday	8	hours worked
Friday	10	hours worked
	—	
	42	total hours to be compensated for the work period

The Department's time and attendance system will calculate:

	32	hours worked
	8	holiday leave

Therefore: 2 excess hours earned (i.e., two more than 40)

Example 2: An FLSA Exempt Employee who works two 10-hour days in an 80-hour Work Period with a holiday:

Monday	8	hours worked
Tuesday	10	hours worked
Wednesday	8	hours worked
Thursday	10	hours worked
Friday	8	hours worked

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Monday	8	holiday leave
Tuesday	8	hours worked
Wednesday	8	hours worked
Thursday	8	hours worked
Friday	8	hours worked
	—	
	84	total hours paid for the work period

The Department's time and attendance system will calculate:

72	hours worked
8	holiday leave

Therefore: 4 excess hours earned (i.e., four more than 80)

- B. Employees may use their excess hours the same way they use their annual leave.
- C. Only excess hours that exceed a base of 80 accrued excess hours are to be paid out on an hour-for-hour basis in the work period in which they were earned.

**6. Management's Authority to Reduce Overtime and Excess Hours**

- A. Overtime and excess hours can strain the Department's budget and hinder the Department's efforts to manage its resources. Therefore, in order to reduce overtime or excess hours, agency management may:
  - (i) Direct an FLSA non-exempt employee to cease work after the employee has earned a total of 40 compensable hours during the work period.
  - (ii) Direct an FLSA exempt employee to cease work after the employee has earned a total of 80 compensable hours during the work period.
  - (iii) Deny an employee's request to work overtime or excess hours.
  - (iv) Approve the use of alternative work schedules to accommodate late meetings, relieve traffic congestion, and ensure the public's access to agency services.
- B. Agency management shall deny the use of leave time (other than holiday leave) that results in an employee's accruing excess hours.

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For example:

Monday	8	annual/sick /other paid leave
Tuesday	8	hours worked
Wednesday	8	hours worked
Thursday	8	hours worked
Friday	10	hours worked
	42	total hours to be compensated for the work period

The time and attendance system will calculate:

32	hours worked
8	annual/sick/other paid leave
2	excess hours earned

As explained above, agency management shall deny this employee the full eight hours of annual or other paid leave. Therefore, in the above example, agency management shall instruct the employee to reduce the annual or other paid leave to six hours so that the total hours paid for the work period will equal only 40 hours and so that the employee would avoid accruing two hours of excess time. Agency management shall not, however, restrict the employee's use of holiday time.

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