

## Office of Personnel Management

### Policy

<b>Policy Title:</b> Fair Labor Standards Law	<b>Policy Number:</b> 70.03
<b>Citation:</b> 29 USC §201 et seq.	<b>Forms:</b> None

### Purpose

The law is intended to ensure fair compensation for labor. To achieve this, the law establishes the minimum wage, defines what is meant by overtime, sets requirements for compensation for all time that any employee is required or permitted to work and requires that certain records be kept. Implementation of overtime pay and compensatory time can be found in the Salary and Payroll Distribution Section of the Office of Personnel Management.

### Specific Provisions

#### Compensatory Time

Arkansas Code §19-4-1612 states: "Overtime. It is hereby declared to be the policy of the State of Arkansas that overtime pay for state employees is the least desirable method of compensation for overtime work." The Code further states that "all state departments, agencies, boards, commissions and institutions may pay overtime to its employees, under the rules and regulations set out by the Federal Fair Labor Standards Act." It is also held to be the policy for the state that the provisions of the Fair Labor Standards Act (FLSA), as amended, be adopted and implemented as the basic wage and hour policy of the state. Further, it is held to be the policy of the State of Arkansas that any overtime work necessary to the continued effective operations of the state shall be managed in the most efficient and economic manner possible.

Compensatory time is defined as time earned for work performed in excess of forty (40) hours in the work week. Compensatory time may not be earned in less than fifteen (15) minute increments.

Except for certain categories of workers, e.g., fire fighters and law enforcement, etc., whose positions receive partial overtime exemptions, all employees performing qualifying nonexempt work within a work week will accrue compensatory time at the rate of one and one-half times the number of hours worked in excess of 40 hours. Nonexempt employees are eligible for compensatory time in lieu of cash overtime payment.

The term agency, as used herein, shall mean all state agencies, departments, boards, commissions, institutions of higher education or others as outlined in the Uniform Attendance and Leave Policy Act (Subchapter 2 of Chapter 4 of Title 21 of the Arkansas Code).

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There are five categories of nonexempt employees:

1. Those whose normal work period is a 40 hour work week, and;
2. Those employees who, by virtue of their job activities, are considered:
3. Seasonal
4. Fire Protection, or
5. Law Enforcement

Those employees in Category B are not on a regularly scheduled 40 hour work week, but have pre-established periods from 7 to 28 days in length.

If an agency pays its employees for overtime in the form of compensatory time off as opposed to cash payment, the following points must be noted:

1. The employees in Category A cannot accrue more than 240 hours in compensatory time off.
2. The employees in Category B cannot accrue more than 480 hours in compensatory time off.

If an employee in either category exceeds the maximum established, they must be compensated in cash payment at the rate of time and one-half for any hours in excess of the 240/480 limit.

An agency does have the option of paying overtime in a combination of cash and compensatory time at the rate of time and one-half; however, this policy must be consistently applied for all eligible employees.

Compensatory time must be earned before it can be used. The time used will be deducted from the employee's accrued compensatory time. All compensatory time of fifteen (15) minutes or more must be accounted for, whether earned or used.

When an employee uses earned compensatory time, he/she shall be paid at the base rate of pay of his/her current grade.

Compensatory time may be used in lieu of sick leave and may be used until the balance is depleted before using annual leave.

Compensatory time may be earned only with the prior approval of the Agency Director, Institution Head or his/her designee.

Agencies are required to maintain complete and accurate records regarding compensatory time earned and used.

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Compensatory time earned shall be included as a separate category on the employee's time sheet.

Employees shall request to use earned compensatory time by completing a request for leave form.

Upon termination from employment, the employee is to receive cash payment for any overtime accrued which has not been used at a rate not less than:

1. The average regular rate received by an employee during the last three (3) years of his/her employment; or
2. The final regular rate of pay received by an employee, whichever is higher.

If an employee is classified in an exempt classified title, it is possible for the agency to present justification to the Office of Personnel Management that the overall duties and tasks being performed are nonexempt in nature. The following documentation should be presented:

1. An internal job description listing the specific tasks.
2. A detailed percentage allotment of time spent in the performance of these tasks based on 100%. (Example: typing - 35%; answering phones - 20%, etc.)
3. The position control number and the name of the employee involved.
4. A copy of the US Department of Labor "Quick Test" completed by the agency.

The Office of Personnel Management will review the materials, determine if the nonexempt category is justified and recommend that overtime compensation at the rate of time and one-half be given the employee. An exception will be made for that class or position only within that agency.

See Leave and Attendance Recordkeeping Requirements.

January 13, 2011