

Overtime Pay Administration and Hours of Work

PURPOSE: To ensure compliance with a variety of state and federal regulations, primarily the federal Fair Labor Standards Act (FLSA) and ORS 653.268 and ORS 653.269, regarding pay administration of overtime and hours worked.

SCOPE: This policy applies to all county departments and employees. The employment status of the employee determines the application of laws/regulations, employment agreements, the County Code, County policies, and collective bargaining agreements. **Collective bargaining agreements covering represented employees may contain provisions additional to those provided by the FLSA and/or other laws/regulations, and in those instances, the collective bargaining agreement takes precedence.** All County departments, collectively, are considered to be a single employer.

POLICY STATEMENT: Clackamas County is required by the Fair Labor Standards Act (FLSA) and state laws and regulations to adhere to strict overtime rules. Protected employees are expected to adhere to established hours of work, and managers must actively supervise and monitor their respective worksites.

Please direct any inquiries regarding these provisions to the Department of Employee Services.

DEFINITIONS

Employee: A person performing work for the County, including regular or temporary status employees.

Exempt Status: Employees who are exempt from the provisions of the Fair Labor Standards Act for overtime, due to meeting the criteria in one of the following exemption categories – Executive, Administrative, Professional, Supervisory, or Computer Employee.

Non-exempt Status: Employees who are covered by provisions of the Fair Labor Standards Act for minimum wage and overtime, and are eligible to receive overtime compensation.

Nonrepresented Group 1 Employees: Department or division directors and other positions designated as Group 1 who are not eligible to be represented by a collective bargaining agreement.

Nonrepresented Group 2 Employees: Employees meeting one of the exemption categories under the FLSA, who are not eligible to be represented by a collective bargaining agreement (may be exempt or non-exempt).

Represented Employees: Employees who are eligible to be represented by a union under a collective bargaining agreement.

OVERTIME APPLICATION FOR COUNTY EMPLOYEE GROUPS

Employee Groups Exempt from Overtime Provisions

Exempt, Nonrepresented Employees (Group 1 and Group 2)

Department or division directors, other members of Nonrepresented Group 1, and **most** members of Nonrepresented Group 2, are exempt from coverage of the laws requiring overtime pay due to the nature of their employment.

These employees do not receive any cash compensation for hours worked in excess of their regularly scheduled daily or weekly hours. Exceptions may be made by the County Administrator in accordance with the County Code. Please direct any questions regarding exceptions to the Department of Employee Services, Classification and Compensation staff.

Emergency Operations Center Activation Exception

In the event the Clackamas County Emergency Operations Center (EOC) is activated, Exempt, Nonrepresented Group 2 employees are eligible to receive overtime compensation for performing critical emergency operation functions. Hours eligible for payment of overtime are hours worked over forty (40) hours in a defined workweek which are directly related to critical emergency operations. Only those persons designated by the Director of Emergency Management as performing functions directly related to critical emergency operations are eligible for such overtime pay. Overtime pay under these circumstances is straight-time pay, based on the employee's current, regular rate of pay.

Law Enforcement and Corrections Employees

Employees engaged in law enforcement or corrections may be compensated for overtime hours worked based on a consecutive period of up to 28 days. For example, overtime compensation would be paid only when hours worked in a 28 day period exceed 171 hours (subject to provisions of the collective bargaining agreement).

Other Exemptions

Elected officials, volunteers and independent contractors, are exempt from such laws. Volunteers typically are unpaid but may be paid a nominal amount to cover expenses incurred.

Employee Groups Covered by Overtime Provisions

Non-exempt, Nonrepresented Employees (Group 2)

Non-exempt Nonrepresented Group 2 employees shall receive overtime compensation for hours worked in excess of 37.5 hours or 40 hours in a week, depending on the employee's regularly scheduled hours of work. Non-exempt Nonrepresented Group 2 employees who are working a flex schedule of ten hours a day and four days a week shall receive overtime compensation after hours worked in one week exceed forty hours.

Non-exempt Nonrepresented Group 2 employees will receive overtime compensation at time and one-half (1.5) their regular rate for all eligible hours. Such overtime compensation will take

the form of compensatory time, cash compensation, or a combination of both, with prior mutual agreement in writing between the appointing authority and the employee.

Represented Employees

Collective bargaining agreements covering represented employees may contain provisions additional to those provided by the FLSA and/or other laws/regulations, and in those instances, the collective bargaining agreement takes precedence. However, in no instance may collective bargaining agreements violate the FLSA or state requirements.

General Overtime Provisions for All Nonrepresented and Represented Employees, Including Temporaries

The County will make every attempt to comply with the provisions of the laws regarding overtime exemptions and salary deductions. If an incorrect deduction has been made, the employee should submit documentation to the Payroll Manager. In the event that an improper or unlawful deduction has been made, the County will reimburse the employee for the amount of the deductions and make a good faith commitment to comply with the laws.

Cash Compensation or Compensatory Time

Application of compensatory time or cash compensation shall be at the discretion of the appointing authority, based on budgetary considerations. It shall be the responsibility of the appointing authority to establish appropriate policy to be implemented throughout the department, which provides for equitable treatment of all employees. An appointing authority may allow the accrual of either compensatory time or cash compensation to be at the employee's discretion, as long as all employees are afforded that same discretion.

Regular Rate of Pay

The regular rate is the total remuneration during the work period divided by the total hours actually worked. The regular rate includes shift differentials, incentive pay, payments for standby time, hazard pay, temporary out of class pay, etc. The regular rate does not include payments for overtime hours worked. The regular rate may not include payments for time not worked such as vacation, holiday, sick, call back pay, or standby pay unless otherwise specified in the applicable collective bargaining agreement.

Maximum Accruals

Compensatory time for most non-exempt employees may not accrue in excess of 240 hours. Employers must pay cash overtime compensation for any overtime work which would place the employee's compensatory time accrual in excess of 240 hours. All attempts possible should be made to allow an employee the opportunity to utilize accrued compensatory time. All compensatory time accrued must be reported to payroll and attempts should be made to use it within the same fiscal year in which it is earned. Records must be maintained for all overtime hours worked and compensatory time hours accrued.

If the County adopts a ten (10) hour day and a four (4) day work week for any of its employees, such employees shall not be allowed overtime compensation until hours worked in any day are in excess of 10 hours. Qualifying employees are paid one and one-half (1.5) times the regular rate of pay whenever they work more than 10 hours in a day or 40 hours in a week.

An exception to the 240 hour ceiling is made for public safety and emergency workers, who may

accrue up to 480 hours of compensatory time. Seasonal workers who work long hours during one period of the year may also accrue compensatory time up to 480 hours, provided their overtime required during the busy season is in excess of 240 hours.

Other Provisions

The employer must allow the employee to use compensatory time within a “reasonable” period after requesting the time off, unless the employee’s absence would unduly disrupt the operations of the agency.

Any accumulated compensatory time at the time of separation will be paid out to the employee at the regular rate of pay.

Employment in Multiple County Departments

Where state or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different job shall not be combined for the purpose of determining overtime liability under the Act.

“Occasional and sporadic” means infrequent, irregular or occurring in scattered instances. In order for the work to be considered occasional and sporadic, it is essential that the character of the activity be intermittent and irregular rather than continuous or regular. Part-time work that reoccurs on a weekly or even biweekly basis does not meet the test for occasional or sporadic employment.

These occasional or sporadic activities must be in a different capacity, and must not fall within the same general occupational category. For example, if a public park employee primarily engaged in park maintenance occasionally cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer subject to the Act’s overtime requirements because it is not in a “different capacity”. This would be the case even though the work was “occasional and sporadic”, and was not regularly scheduled. Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a “different” capacity.

County employees who are working “regularly scheduled” part-time or temporary assignments for a different County department must be paid overtime compensation for all hours worked exceeding 40 per week. In order for an employee’s occasional and sporadic work to qualify for exemption the employee’s decision to work in a different capacity must be made freely and without coercion, direct or implied, by the employer.

HOURS OF WORK PROVISIONS FOR NON-EXEMPT EMPLOYEES

The Fair Labor Standards Act and state laws require local governments to adhere to strict overtime rules for those who fall under the protection of these laws. Protected employees are expected to adhere to established hours of work, and County managers and supervisors must actively monitor their respective worksites and employees.

Work Week

Work schedules for full-time County employees are generally set at 37.5 or 40 hours per week, depending upon the work unit and/or collective bargaining agreement. Part-time schedules may be set at fewer than 30 hours per week.

Hours worked must be computed based on a regular and fixed seven consecutive day work week. For most positions this is generally set from Sunday through Saturday. Overtime hours are counted and computed for the total number of hours worked each work week, not the pay period (which may be longer), or the total hours worked each day.

Meal and Break Periods

Under Oregon law, employees who work six hours or greater must receive at least a 30 minute unpaid meal period and two paid ten-minute rest breaks. Meal periods may be excluded from hours worked if the employee actually is relieved of duty for an entire meal period of at least 30 minutes. When a meal period is not taken, the period constitutes hours worked. Employees who work through meal periods without prior authorization should be directed to refrain from such activity, and may be subject to discipline. It is a Bureau of Labor and Industries violation to allow employees to work through a meal period for the purpose of leaving work early.

Oregon employers must also provide employees with a paid, uninterrupted 10 minute rest break for every four-hour work segment or major portion thereof (i.e. 2 hours plus one minute). The rest break should be given in the middle of each segment, whenever possible.

Clackamas County employees who work an eight hour day (or 7.5 hour day), receive a 15 minute break in the first half of their eight hour shift, a 30 minute meal break, followed by a 15 minute break in the second half of their shift.

Engaged to Wait

Hours worked includes all hours the employee is engaged to work. The Department of Labor defines "hours worked" as "all time during which an employee is necessarily required to be on the employer's premises on duty or at a prescribed work place."

Hours worked also includes hours "engaged to wait" for work or actually performing work, whether or not authorized. If an employee is "engaged to wait" or directed to wait for something to occur, waiting time will be counted as time worked. The waiting time must prevent the employee from using the time efficiently for his/her own purposes. On the other hand, if the employee arrives early and merely waits to start working, that period of time does not count. If an employee starts work early, or works beyond the end of the regular shift, those hours must be considered as time worked, whether or not overtime work was authorized or necessary.

NOTE: Employees may be disciplined for unauthorized or unnecessary work in violation of policy or directive. Managers are strongly encouraged to make hours of work clear to employees and to proactively supervise adherence to those established hours.

On-Call Pay

Certain employees may be designated for on-call work after regular work hours under certain conditions. Please refer to appropriate collective bargaining agreements for additional information.

Call Back Pay

Certain employees may be called to report to a worksite outside of their regular work hours. Please refer to appropriate collective bargaining agreements for additional information.

Travel Time

Hours worked includes the following travel time:

- Time spent traveling during regular work hours on a scheduled work day.
- Travel time occurring during regular hours on an employee's scheduled day off (i.e., travel occurring between 8:00 a.m. to 5:00 p.m. on Saturday/Sunday for an employee who works 8:00 a.m. to 5:00 p.m. Monday through Friday).
- Travel time outside of regular work hours if the employee is driving an automobile, boat, plane, etc., or is required to act as an assistant or helper while being a passenger, or is performing work related activities while being a passenger.

Hours worked does not include:

- Normal travel between home and work.
- Travel time as a passenger outside of regular work hours (if no work is being performed).
- Regular exclusions for meals.
- Sleep time.
- Commute time to and from airport, bus station, etc., except if travel to station of departure exceeds the employee's normal commute time to work.
- Excess time spent driving a car if employee had been offered public conveyance and chose to drive instead (can exclude only time exceeding the time which would have qualified as hours worked on public conveyance).

Training Time

Attendance at lectures, meetings, training programs and similar activities must be counted as hours worked unless all the following criteria are met:

- Attendance is outside of the employee's regular working hours.
- Attendance is truly voluntary.
- Training is not directly related to the employee's job (exception for employees taking courses on their own initiative outside of work hours such as college or trade school courses).
- The employee does not perform any productive work during such attendance.

HOURS OF WORK PROVISIONS FOR EXEMPT EMPLOYEES

Non-represented exempt employees who work uncompensated overtime may take time off from work, with prior approval from their supervisor, not to exceed one-half day without reducing leave accrual balances.

INTERNET LINKS

County Ordinance (<http://www.clackamas.us/code/documents/title2.pdf>)