

POLICY



MEMORANDUM

SUBJECT: Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime and the Granting of Compensatory Time	REVISION NO-5 POLICY NO.: 7
ISSUED BY: OFFICE OF PLANNING AND BUDGET STATE PERSONNEL ADMINISTRATION	

Definitions

The following definitions will be used in this policy statement

Non-exempt employees - Employees who are covered by or subject to the minimum wage, overtime and recordkeeping provision of the federal Fair Labor Standards Act (FLSA).

Exempt employees – Employees who, because of their job duties, are not subject to the FLSA minimum wage, overtime or recordkeeping requirements of the law. Exemptions from the law are narrowly defined and the employer must prove that the exemption rules apply. Appendix 1 provides guidance in determining exemption status.

1. Legislative Authority

Under the Budget Act as amended (Official Code of Georgia Annotated Section 45-12-70 et seq.), the Office of Planning and Budget is responsible for developing financial plans for the State, coordinating the fiscal affairs of the State, and seeing that the financial resources of the State are used most efficiently. Under the Merit System Act as amended Official Code of Georgia Annotated Section 45-20-1 et seq.), the Commissioner of State Personnel Administration is responsible for administering the rules and regulations of the State Personnel Board, assuring compliance therewith in all agencies covered by the State Personnel Administration (SPA), and ensuring compliance with all applicable State and federal statutes and regulations concerning personnel administration and related matters. The Director of the Office of Planning and Budget and the Commissioner of State Personnel Administration are therefore jointly issuing this policy memorandum.

Questions concerning the technical application of the Fair Labor Standards Act should be directed to the SPA. Legal interpretations should be obtained from the Attorney General. Questions related to budget impact of overtime scheduling should be directed to the Office of Planning and Budget.

2. Federal Requirements

The Fair Labor Standards Act (FLSA) of 1938, as amended, establishes minimum wage rates, maximum work hours, overtime pay requirements, equal pay standards and child labor restrictions for the employees subject to its provisions. All State executive and judicial branch

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employees are covered by the Act, except those who are either 1) elected to State Office, 2) selected by such an officeholder as a member of his personal staff (and not subject to civil service laws), 3) appointed by such an officeholder to serve on a policymaking level (and not subject to civil service laws), or 4) immediate advisors to such an officeholder with respect to the constitutional or legal powers of his office. Generally, legislative branch employees are not covered by the Act. In addition, those State employees meeting the Act's criteria for professional, executive, administrative, computer or other exemptions are exempt from overtime pay, although their employment must comply with the record-keeping and equal pay requirements of the Act.

Generally, the overtime provisions of the Act for governmental employees and this Policy maintain that:

- Nonexempt employees must receive overtime compensation for all time worked over 40 hours in a workweek. Exceptions may apply to law enforcement, fire protection, and hospital employees. These exceptions are detailed in Paragraphs 7.1(a) and 7.1(b) below;
- Overtime compensation may be provided to nonexempt employees either in the form of compensatory time or overtime payments (cash). Section 5 details the conditions that must be met before compensatory time can be used in lieu of overtime payment. For the purposes of this policy, compensatory time which the FLSA requires to be paid to nonexempt employees as provided herein and in Section 5 is denoted as "FLSA compensatory time." All other types of compensatory time, including that which may be granted to covered employees in special circumstances as provided in Sections 15, 16, 20 and 21, is denoted as "State compensatory time;"
- If FLSA compensatory time is provided, one and one-half hours off must be granted for each hour of overtime worked. If payments are provided, the overtime pay must be computed at one and one half times the regular hourly rate;
- Overtime will be earned and compensated for in increments no larger than five minutes. Employee starting and stopping time should be rounded to the nearest five minutes. Section 12 discusses the basis for overtime compensation in full.
- With few exceptions, all hours actually worked by employees must be included in overtime calculations. The only exceptions are detailed in Section 14 below;
- Time off for state holidays, paid leave and compensatory time off is not counted as hours worked in calculating overtime payments; and
- Overtime earnings, including FLSA compensatory time, must be calculated for each workweek. Hours cannot be averaged over two or more workweeks, except as noted above.

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Although the joint authority of OPB and the SPA extends only to executive branch employees, most State employers -- including authorities, corporations, the University System, and the Judicial Branch are covered by the FLSA. They are, therefore, subject to enforcement activities by appropriate federal agencies and liable for any violations through actions in federal court.

3. Scope and Objectives of Policy

- This document establishes state policy in areas not covered by the Act or in which the Act allows for alternative methods of compliance. The policy is not intended to conflict with or supersede any part of the Fair Labor Standards Act. Since the Act takes precedence over State policy, any conflicts between the two must be resolved by complying with the federal requirements.

It shall be the responsibility of each agency head to minimize the occurrence of overtime work to the extent practicable. Cash payments for overtime by an agency are authorized only in those situations in which the following criteria are met:

- All reasonable alternatives to the payment of overtime -- such as the granting of equivalent time off during the same workweek for employees who work extra hours in the beginning of the workweek, the accrual of compensatory time which the department believes an employee will be able to take off within a year of the date earned, and the use of temporary or part-time help -- have been considered and found to be inapplicable by the agency;
- The agency's approved Annual Operating Budget and Quarterly Allotment have funds itemized under Personal Services for overtime or a written request for authorization to pay overtime has been forwarded to and approved by the Office of Planning and Budget. See Section 17 for emergency approvals; and
- The agency has established a procedure whereby all overtime worked is properly authorized by appropriate supervisory employees. (Note: If overtime is worked by a non-exempt employee without prior approval, that is a matter for appropriate disciplinary action, but the time worked must be counted and paid properly in accordance with applicable law under FLSA.)

4. Employees Who Must Receive FLSA Compensatory Time or Overtime Payments for Overtime Worked

With the following exceptions, State employees of the Executive and Judicial Branches must receive overtime payments or compensatory time when they work more than forty hours in a workweek:

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- Elected officials and their personal staff as enumerated in Section 2;
- Employees who meet the Act's definition of an exempt employee including executive, administrative, professional or computer professional employees. These categories of employees are defined in [Appendix 1](#) of this policy memorandum;
- Employees of an amusement or recreational establishment if (a) it does not operate more than 7 months in a calendar year or (b) its average receipts for any six months of the preceding calendar year did not exceed one-third of its average receipts for the other six months;
- Employees engaged in law enforcement or fire protection activities (See Paragraph 7.1 (a) for a description of the nature of this exception.); and
- Employees of hospitals or nursing homes (See Paragraph 7.1 (b) for a description of the nature of this exception.)

In addition, certain types of work in very specific circumstances can be excluded when calculating total hours (including overtime) worked. See Section 14.

5. Conditions for Compensating Non-Exempt Employees with FLSA Compensatory Time Rather than Overtime Payments for Overtime Worked

As provided in Section 3, State policy is that FLSA compensatory time will be used in lieu of overtime payments where economically practical. In order for an agency to comply with this policy legally, it must do the following:

- Arrive at an agreement or understanding with each employee prior to the performance of overtime work that FLSA compensatory time will be used to compensate the employee for such work;
- Pay each employee at a specified rate for any FLSA compensatory time that would exceed a specified limit;
- Pay each employee who terminates employment for all accrued FLSA compensatory time at a specified rate; and
- Permit each employee who requests to use accrued FLSA compensatory time to use such time within a reasonable period if the use does not unduly disrupt the agency's operations.

State policy for implementing each of these conditions is specified in the following subsections:

5.1 Arrive at Agreement or Understanding with Each Employee

All individuals employed as of April 15, 1986, will be considered to have agreed, or understood, that they may receive FLSA compensatory time rather than overtime payments as compensation for overtime worked. Each individual employed after that date must sign a document to this effect as a condition of employment at the time of employment. Such document will contain the statement provided in [Appendix 2](#).

5.2 Pay Each Employee for Excess Accrued FLSA Compensatory Time

Each employee who has the maximum 240 hours of FLSA compensatory time accrual (480 hours for work in a public safety activity, emergency response activity or seasonal activity) must receive cash payment for any additional overtime worked. Such payment shall be based on the regular rate (See Sections 9 and 10) earned by the employee at the time the payment is made.

All such payments must be made in conformity with the provisions of Sections 3 and 17.

5.3 Pay Each Employee Who Terminates FLSA Compensatory Time

Each employee who has accrued FLSA compensatory time when he or she terminates employment with an agency shall receive payment for each hour at the higher of the following rates:

- The average regular rate received by the employee during the last three years of employment, or
- The final regular rate received by the employee.

State agencies shall have the option of providing payment to an employee in lieu of granting FLSA compensatory time at any time during the employee's employment so long as the employee is paid at the regular rate earned by the employee at the time the employee receives such payment.

State policy shall be that the agency from which an employee terminates employment shall make the payment for all accrued FLSA compensatory time. FLSA compensatory time shall not be transferred between agencies. All such payments must be made in conformity with the provisions of Sections 3 and 17.

5.4 Permit Each Employee to Use FLSA Compensatory Time within a Reasonable Period

An employee must be granted FLSA compensatory time off within a reasonable time after making the request if the use of such FLSA compensatory time off does not unduly disrupt the employing agency's operations.

6. Standards for Working Hours, Meals, Breaks and On-Call Time

The State Compensation Plan adopted by the State Personnel Board is based on employees working an average forty hours in a seven day work week, exclusive of time off for meals and inclusive of time off for State holidays and approved leave. Consequently, except as provided in Section 7 of this Policy Memorandum, all regular full-time employees of Executive Branch agencies are required as a minimum to adhere to a forty hour workweek schedule, with the exception of an authorized alternate work week schedule.

Off duty time for meals is not counted as hours worked for purposes of calculating overtime payments.

Regulations governing the Act state that, "Work not requested but suffered or permitted is work time. In all cases it is the duty of management to exercise its control and see that work is not performed if it does not want it to be performed. The mere promulgation of a rule against [performing work during non-scheduled working hours] is not enough." If an employee alleges that he or she worked before or after normal working hours or during a meal period when he or she was permitted to occupy his or her work station, and that the employee is entitled to overtime payments as a result, the burden of proof that no work was performed is on the agency. Therefore, agencies are strongly advised to not permit non-exempt employees to occupy their work stations before or after working hours or during meal periods. Where possible, employees may occupy a break or conference area during these non-work times.

Agencies are authorized to establish beginning and ending times of the work day and of meal periods. However, meal periods (non-work time), if provided, must be at least thirty minutes long, and employees must not perform any duties, whether active or inactive, during their meal periods. Because of the potential for work to be performed while employees occupy their work stations and because of the limited likelihood of employees being able to complete a meal and return to work within 30 minutes if they buy their meals off-site, it is recommended that agencies establish meal periods of at least 45 minutes.

Agencies are authorized but not obligated to establish up to two fifteen minute breaks per work day. These breaks are considered work time for compensation purposes. Under no circumstances may any employee lengthen a meal period, report later to work, or depart earlier from work by foregoing or "working through" a break. Breaks are a privilege and not a right.

Should an agency require an employee to work during one or more break periods, no overtime or compensatory time is earned by such work.

On-call time is not work time unless an employee is required to remain on the agency's premises or is so restricted that he or she cannot use the time effectively for his or her own purposes. An employee who is merely required to wear a paging device or leave word where he or she may be reached is not working while on call.

More specific definitions of what is and what is not work time are presented in [Appendix 3](#).

7. Work Period

Work periods may be defined differently for specific categories of employees. As noted in Section 18, all agencies are required to maintain written records establishing each employee's work period.

Work periods which may be defined are the following:

7.1 Work Period for Most Nonexempt Employees

With two exceptions -- which are discussed in Paragraphs 7.1 (a) and 7.1 (b) -- each employer is required by the Fair Labor Standards Act to establish a work period which is a permanent workweek for each employee who is subject to the Act's minimum wage and overtime provisions. Each employer is also required to maintain records which show the time of day and day of week when each employee's workweek begins. A workweek must consist of a fixed period of seven consecutive days. These seven days need not coincide with the calendar week, but may begin on any day and at any time. The beginning of the workweek may be changed, if the change is intended to be permanent and is not adopted to evade the overtime pay requirements of the law. Employees whose workweek begins at the close of business on Friday can work on the weekend and be given equivalent time off before the following Friday without being eligible for overtime compensation.

Employees in the same organization may have different workweeks. Also, it is not required that the workweek coincide with the payroll period.

Except as noted below and in Section 2, overtime pay is required when non-exempt employees work more than forty hours in any workweek.

7.1 (a) Work Period for Law Enforcement and Fire Protection Employees

Law enforcement employees , as defined by the Act, refers to any employee (1) who is a uniformed or plain clothed member of a body of officers and subordinates who are empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

This section applies to only fire protection personnel and *sworn* law enforcement personnel.

The work period for law enforcement employees -- which include security employees who work in correctional institutions, but do not include dispatchers -- and for fire protection employees may be established from seven to 28 days. Once the beginning time of an employee's work period is established, it must remain fixed. However, different work periods may be used for different employees or groups of employees.

Law enforcement employees must receive overtime compensation for all hours over 171 worked in a 28 day work period, or a proportional amount of hours in a shorter work period. Fire protection employees must be paid overtime for all hours over 212 worked in a 28 day period, or a proportional amount of hours in a shorter work period. The maximum number of allowable hours in work periods of varying lengths before overtime compensation must be made are as follows:

Work Period (days)	Maximum Hours	
	Fire	Police
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128

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20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

In order to qualify for this exemption, a law enforcement or fire protection employee must not spend more than 20% of his or her work hours in any work period in unrelated activities.

7.1(b) Work Period for Hospital and Nursing Home Employees

For most nonexempt employees, the Act does not require overtime compensation based on the hours worked in a day, but only the total hours in a workweek. However, there is an exception to this requirement for certain types of employees. Employees of hospitals and nursing homes, if there is advance agreement between the employees and the employer, may be compensated for their overtime work on the basis of a work period of 14 consecutive days instead of a workweek of seven days, provided those employees receive overtime compensation for any work in excess of eight hours in any workday and 80 hours in the 14-day period.

7.2 Work Period for Exempt Employees

In certain agencies, the functions being performed by exempt employees may result in a greater or lesser number of assigned work hours from week to week, and each agency may establish a work period from one week to three months for its exempt employees based on the responsibilities and requirements of the jobs involved. In so doing, each agency shall be responsible for applying defined work periods consistently to exempt employees doing similar work. This can be done by either of the following two methods:

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- A defined work period may be applied to all exempt employees within the agency with the same job classifications; or
- A defined work period may be applied to all exempt employees doing the same type of work in a work unit.

Under no circumstances shall assigned working hours average less than forty hours a week, exclusive of off-duty time for meals, over a three month period.

8. Avoidance of Overtime and Prompt Payment

A non-exempt employee who has worked the maximum allowable hours prior to the end of the work period may be given equivalent time off for the remainder of the work period in lieu of allowing him to work at overtime rates. When overtime is worked and is to be compensated with overtime pay, however, it must be paid promptly. Therefore, payroll systems should be capable of making overtime payments no later than the end of the pay period following the one in which the overtime pay is earned.

9. Computation of Regular Rate for Employees Not Engaged in Law Enforcement or Fire Protection Activities

Nonexempt employees who are not engaged in law enforcement or fire protection activities are entitled to overtime compensation (either compensatory time or cash overtime pay) for hours worked over forty in a workweek. When such employees are paid cash overtime pay, the overtime pay is paid at the rate of 1.5 times the employee's regular rate of pay.

For such employees, their regular pay (usually paid semi-monthly) is intended to cover forty hours of work in a workweek. Accordingly, their regular rate of pay for overtime pay purposes is the so-called 40-hour rate, i.e. the rate determined by dividing their annual pay rate by 2080 hours. When such employees work more than forty hours in a single workweek (and if they are not compensated with compensatory time), they will be paid for those overtime hours at the rate of 1.5 times their regular rate of pay.

Example: An employee with an annual pay rate of \$31,000 per year works 43 hours in one workweek. To obtain the regular rate, \$31,000 is divided by 2,080 hours. This division gives a regular rate of \$14.90 per hour. For the 3 hours of overtime, the employee is paid overtime compensation at the rate of 1.5 times \$14.90, i.e. \$22.35 per hour, for a total of \$67.05 in overtime compensation for that workweek.

Note: A nonexempt employee's "regular rate" also includes supplemental components such as night shift differential for which employees are eligible in a week when they work overtime. Other types of pay which must be included in an employee's regular rate of pay include incentive pay (for example, meritorious awards, education and learning payments, goal-based incentives, lump sum bonus performance increases, commissions, etc.).

For employees paid on a straight hourly basis, the regular rate of pay is the employee's hourly rate. As noted above, the regular rate also includes supplemental incentive payments.

10. Computation of Regular Rate for Law Enforcement and Fire Protection Employees

Employees engaged in law enforcement or fire protection activities may be assigned a work period of up to 28 days for overtime compensation purposes. In the case of such employees who are assigned a 28-day work period, the employees are entitled to overtime compensation (either compensatory time or cash overtime pay) for hours worked over 171 (law enforcement employees) or 212 (fire protection employees) in a 28-day work period. When such employees are paid cash overtime pay, the overtime pay is paid at the rate of 1.5 times the employee's regular rate of pay.

For such employees, their regular semi-monthly payments are intended to cover 171 hours in a 28-day work period (law enforcement) or 212 hours in a 28-day work period (fire protection employees). Accordingly, the regular rate of pay for such law enforcement employees is the 171-hour rate (i.e. the rate determined by dividing the employee's annual pay rate by 2,223 hours, the annual number of hours corresponding to 171 hours in a 28-day work period). Similarly, the regular rate of pay for such fire protection employees is the 212-hour rate (i.e. the rate determined by dividing the employee's annual pay rate by 2,756 hours, the annual number of hours corresponding to 212 hours in a 28-day work period).

Once the employee's regular rate of pay is determined, overtime pay is calculated for all hours worked over the maximum number of hours for the employee's work period as listed in the 2nd or 3rd column of the chart in Section 7.1(a).

Example: A fire protection employee with an annual pay rate of \$31,000 and a 28-day work period works 224 hours in one work period. The employee's regular rate is \$31,000 divided by 2,756. This division gives an hourly rate of \$11.25 per hour. For the 12 hours of overtime worked beyond 212 in this work period, the employee will receive 1.5 times \$11.25 (i.e. \$16.88 per hour) for a total of \$202.56 in overtime pay for that work period.

Note: If an agency elects to do so for business reasons, the agency may choose to pay such employees an overtime rate which is higher than the overtime rate determined using the method described above. For example, the agency may choose instead to pay overtime at the rate of 1.5 times the rate determined by dividing the employee's annual pay rate by 2080 hours.

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The overtime rate determined by that method will always be higher than the overtime rate calculated using the method described in the example above.

As noted in Section 9, an employee's regular rate of pay also includes supplemental payments such as various types of incentive pay, bonuses, etc.

11. Computation of Overtime Premium

"Overtime premium" is the additional amount of pay provided, in addition to the regular rate, for overtime hours worked. The hourly overtime premium must be calculated by multiplying the regular rate by one-half. It must be added to the regular rate for each hour of overtime worked.

12. Basis for FLSA Overtime Compensation

Overtime compensation will be provided for all time worked over forty hours per week (171 hours in a 28-day work period for law enforcement employees and 212 hours in a 28-day work period for fire protection employees).

13. Pay Rate Changes

Since most pay rate changes will not coincide with the employee's workweek, but rather with the pay period, care should be taken to ensure that the intentions of the Fair Labor Standards Act are not violated. For example, if there is a pay rate change and overtime in the same workweek, it will be necessary to determine when the overtime was earned, so that the overtime can be paid at the proper rate.

The following illustrations are for two employees whose workweek is Monday through Sunday and whose pay rate was changed as of Friday.

	<u>Mon.</u>	<u>Tues.</u>	<u>Wed.</u>	<u>Thurs.</u>	<u>Fri.</u>	<u>Sat.</u>	<u>Sun.</u>	<u>Total</u>	<u>Overtime</u>
A <i>Hours</i>	8	8	10	8	10	--	--	44	4
B <i>Hours</i>	10	10	10	12	8	--	--	50	10

A - The four hours of overtime would be paid at the new rate, since the employee did not exceed forty hours until he was working at the new rate.

B - Two hours of overtime were earned at the old rate and eight hours at the new rate.

Note: When the employee's pay rate change is a pay increase, the above method will be used as it is the more favorable method for the employee in that circumstance and is a simpler method. If the employee's pay rate change is a pay decrease, the employee's "regular rate" that week will

be determined using the weighted-average-rate method: The total pay for the week (excluding overtime premiums) is divided by the total hours worked in that week; one-half of that regular rate, times the number of overtime hours worked that week, would be added to the employee's pay as overtime premium.

14. Hours Worked Which Are Not Included When Calculating the Total Number of Hours Worked to Determine Overtime Calculations

Three types of work -- special detail work for fire protection and law enforcement employees, occasional or sporadic employment, and substitution work for an absent employee performing the same kind of work -- are not to be included in the calculation of the hours for which a covered employee is entitled to overtime compensation if the conditions described below are met. For example, if a covered employee works 42 hours in a week on his normal assignment and performs another six hours of "occasional work" as described below, the employee would be entitled to overtime compensation (compensatory time at the rate of 1 1/2 hours for each hour or overtime payment at the overtime rate described in Section 11) for two hours only. Specific requirements are described in the following subsections:

14.1 Special Detail Work for Fire Protection and Law Enforcement Employees

If an employee engaged in fire protection or law enforcement activities agrees, solely at his or her option, to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours the individual was employed by the separate and independent employer shall not be included by the agency employing the individual in the calculation of the hours for which the employee is entitled to overtime compensation under the following conditions:

- The agency must not direct its employees engaged in fire protection, law enforcement, or security to perform the special detail for a second employer;
- The agency may facilitate the employment of such employees by a separate and independent employer; and
- The agency may affect the conditions of employment of such employees by a separate and independent employer.

14.2 Occasional or Sporadic Employment

If a covered employee undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment which is in a different capacity from any capacity in which the employee is regularly employed by his or her agency, the hours such employee was employed in performing the different employment shall not be

included by the agency in the calculation of the hours for which the employee is entitled to overtime compensation.

In such a situation, if the agency chooses to do so, it may grant the employee compensatory time on an hour for hour basis or pay additional salary at the regular rate for the occasional or sporadic work for all hours worked above forty in a work week.

14.3 Substitution Work for an Absent Employee Performing the Same Kind of Work

If a covered employee who performs work in any capacity in an agency, agrees with the approval of the agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by the agency in the same capacity, the hours the employee worked as a substitute shall not be included by the agency in the calculation of the hours for which the employee is entitled to overtime compensation.

Substitution work must be approved by the supervisor(s) of both the employee performing the substitute work and the employee who is absent. A document must be signed by both the employee performing the substitute work and his or her supervisor attesting that such work is being performed solely at the employee's option. No record need be kept of the hours worked, but the document signed by the supervisor(s) and the employee must be retained.

15. Paid Holidays

The Fair Labor Standards Act does not require overtime compensation for holiday work unless the total hours actually worked during the week exceed forty. The policy is that State employees will not receive overtime compensation until they have actually worked more than forty hours, even though the workweek includes one or more holidays. This policy applies regardless of whether an employee works on the holiday or on a different day during the week which includes the holiday. This does not prohibit an agency from affording an exempt employee equal time off at a later date for such work ("State" compensatory time).

16. Paid Leave

Overtime compensation is required only when the work time exceeds forty hours in a workweek. Therefore, the State policy regarding paid leave shall be the same as that for holiday time, and paid leave shall not count as work time for all State employees.

17. Submission of Request to Pay Overtime

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A State agency may obtain approval from the Office of Planning and Budget to pay overtime by either of the following two processes:

- Where a continuing need for overtime has been identified, itemize funds for overtime payment will be requested in the agency's Annual Operating Budget reviewed and approved by the Office of Planning and Budget. When approval is secured, agencies will be authorized to pay such overtime within the provisions of this policy up to the funding level indicated; or
- Where the need for payment of overtime cannot be anticipated, a written request for authorization to pay overtime should be forwarded to the Office of Planning and Budget prior to incurring the overtime. Such requests shall be submitted on the form presented as [Appendix 4](#). Until written approval is received from the Office of Planning and Budget, the requesting agency may not incur any employee overtime expense except where the agency encounters an emergency situation. Where a State agency encounters an emergency situation in which the payment of overtime is required to continue essential services to the general public and it is not possible to obtain advance approval from the Office of Planning and Budget, the agency shall submit a written request for authorization to the Office of Planning and Budget as soon thereafter as possible.

18. Required Records

The Fair Labor Standards Act requires that employers must keep various payroll records for each and every covered employee, whether or not the employee is subject to the law's overtime requirements. The only State employees who are excluded from coverage and therefore the record keeping requirements, are elected officials, their immediate staffs and appointees on the policymaking level, and employees of the General Assembly (except for employees of the legislative library). Therefore, certain types of payroll records must be maintained for most full-time State employees. The law also requires agencies to maintain other basic information. The format is not specified, but the information must include at least the following:

Identifying Information:

1. Employee's full name as used for Social Security record keeping purposes and any identifying number which is used in place of the name on any work or payroll records;
2. Employee's home address, including zip code;
3. Birth date, if under 19 years of age;

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4. Sex;
5. Occupation (job title) in which employed;

Hours:

6. Time of day and day of week when employee's workweek -- or other work period where applicable as provided in Paragraphs 7.1 (a) and (b) -- begins. (If this is the same for all employees, a single notation may be used for all employees);
7. Hours worked each day;
8. Total hours worked each workweek, or other work period where applicable as provided in paragraphs 7.1 (a) and (b);

Wages:

9. Basis on which wages are paid (such as "\$2 an hour," "\$90 a week," "piecework," "\$600 a month");
10. Regular hourly rate of pay for any work week when overtime is worked;
11. Amount and nature of each payment excluded from the "regular rate";
12. Total daily, weekly or bi-weekly straight-time earnings including those due for any overtime worked but exclusive of premium overtime compensation;
13. Total premium pay for overtime hours for the workweek over and above straight-time earnings earned during overtime worked;
14. Total additions to or deductions from the employee's wages for each pay period. Additionally, a record of the dates, amounts, and nature of the items which make up the total additions and deductions shall be maintained in individual employee accounts;
15. Total wages paid each pay period; and
16. Dates of payment and of the pay period covered by the payment.

Records for individuals who qualify for exemption as professional, executive, administrative or computer professional employees do not have to contain items 7, 8 and 10 through 14. Records for these individuals must also include the place or places of employment.

The State's Human Capital Management System (HCM) currently maintains records which satisfy the requirements of items 1-5, 9, 11, and 14-16. HCM can also satisfy the

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requirements of item 12 for weekly earnings only, and it can satisfy the requirements of item 10 under certain circumstances. For further information, agencies should contact HCM consultants in the State Accounting Office (SAO).

The Fair Labor Standards Act requires that all basic employment and earnings records (including time records) must be maintained for at least two years and that payroll records must be maintained for at least three years.

In addition to meeting the Act's requirements, each agency shall:

- Maintain records indicating the exemption status for each employee;
- Maintain documentation justifying each exemption decision; and
- Maintain appropriate records on employee FLSA compensatory time in a manner similar to that used for annual leave. Under no circumstances shall the official record of compensatory time be maintained by the affected employee.

Each agency is responsible for meeting these record keeping requirements.

19. Employees Eligible for State Compensatory Time

Each agency shall develop a formal policy establishing which, if any, of its employees are eligible for State compensatory time.

20. State Compensatory Time for Eligible Employees

State compensatory time, on a straight-time basis, may be granted (in increments equivalent to those for which FLSA compensatory time is granted) to an eligible exempt employee who is required to work longer than the normally assigned hours in a work period, or to a non-exempt employee under conditions described in Sections 15 and 16. Such State compensatory time shall be granted to an eligible employee only when the employee actually reports to work and not when he or she is simply "on-call."

An eligible employee may not accumulate more than 240 hours of State compensatory time and must utilize all accumulated State compensatory time within one year of the date that it is earned. All State compensatory time not taken within one year of the date earned shall be lost.

An employee who transfers from employment with one State agency in the Executive Branch to another may not transfer any accumulated State compensatory time to the agency to which he or she is transferring. In the event that an employee terminates employment with a

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State agency in the Executive Branch, all accumulated State compensatory leave is lost and the employee is not entitled to be paid for such leave.

Each State agency shall establish a procedure whereby all State compensatory time claimed by its employees is properly authorized by appropriate supervisory employees. Appropriate records shall be maintained on employee State compensatory time by each State agency in a manner similar to that used for employee FLSA compensatory time. Under no circumstances shall the official record of State compensatory time be maintained by the affected employee.

21. Implementation

State agencies are required to identify exempt and non-exempt employees, as defined in this policy, by following procedures established by the State Personnel Administration. Technical assistance will be provided, upon request, by the -State Personnel Administration.

State agencies are authorized to develop specific policies and procedures to implement this policy. However, all such policies and procedures must conform to the Fair Labor Standards Act and associated regulations issued by the United States Department of Labor. Applicable regulations are listed in [Appendix 5](#). In addition, all agency policies and procedures that deviate from this policy must have the approval of the Office of Planning and Budget and the State Personnel Administration.

22. Effective Date

These revised rules, regulations and procedures shall become effective January 1, 2009 and may be updated and revised from time to time as necessary.