

Prepared by the Personnel Management Office.
This is a new Administrative Procedure.

May 1986

GENERAL

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A9.035 FAIR LABOR STANDARDS ACT (FLSA)

1. Purpose. To establish procedures to comply with the provisions of the Fair Labor Standards Act of 1938, as amended. (Enforced by the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.)
2. Objectives.
 - a. To provide administrators and supervisors with the requirements for complying with FLSA and guidelines for maintenance of adequate records.
 - b. To provide guidelines for maintenance of adequate work records.
3. Applicability
 - a. The FLSA, in general, applies to the following categories of employees:
 - (1) Civil Service employees in all non-supervisory blue-collar positions, in all non-supervisory white collar positions and in certain trainee and journeyworker positions in the professional/scientific classes. (Note: Although coverage generally follows the collective bargaining unit designations (e.g. BU 1, 3, 13), there may be exceptions within the unit when the FLSA standards are applied to a specific employee and not to another.)
 - (2) Board of Regents (BOR) employees in non-supervisory technical positions, non-journeyworker or trainee positions and student helpers.
 - b. The FLSA does not normally apply to BOR employees occupying positions in the following classifications:

- (1) Faculty -- all classifications
- (2) APT -- all administrative and professional classifications except trainees or non-journeyworker positions and supervisory technical positions.
- (3) Executive and Managerial -- all classes.
- c. Applicability is determined by actual job duties and responsibilities expected to be performed and authority expected to be exercised and not by out-of-date position descriptions or classification titles.

4. Responsibilities

- a. Vice Presidents, Chancellors, Deans and Directors, or their designees are responsible for:
 - (1) Determining the applicability of FLSA to all employees within their respective units. Guidelines for determining exemption are included as Attachment A.
 - (2) Ensuring compliance with FLSA, including maintenance of appropriate recordkeeping.
- b. The University Personnel Management Office is responsible for:
 - (1) Maintaining liaison with the State Department of Personnel Services (DPS) to keep up with changes required to comply with the Act;
 - (2) Providing guidelines for administration of FLSA through the Administrative Procedures and separate memoranda as appropriate.

5. Guidelines and Procedures

- a. The minimum wage is \$3.35 per hour under the Act. (Note: all employees of the University including student helpers are now paid at or above the minimum wage.)
- b. The maximum worksheet is 40 hours of work per week (any seven consecutive days).

- (1) An employee must be paid for all hours worked; paid holidays, paid leaves, etc., are not considered hours worked under the Act.
 - (2) Prior approval by competent authority is not required to be credited with hours worked; the fact that it was done is sufficient proof.
 - (3) For dual appointments, i.e., work performed in more than one department or agency within the State, the hours worked in each job are in the workweek combined for purposes for overtime compensation since the State of Hawaii is the employer. However, if the second job is working part-time in a different capacity and is performed voluntarily on no more than an occasional, sporadic basis, then the hours need not be combined in calculating overtime compensation.
 - (4) If an employee is required or permitted to be working prior to the scheduled time, during a scheduled time off within the workday and after the scheduled time all such time is considered hours worked. (E.g., Secretary remains in the office during her authorized lunch break and picks up incoming phone calls; the period of her lunch break is considered hours worked for computing FLSA overtime.) Holidays and paid leaves are not considered hours worked for FLSA purposes. Supervisors must make an effort to prevent unauthorized overtime work from being done. The issuance of a notice to that effect without subsequent enforcement is insufficient.
- c. Overtime must be paid at one and one-half times the regular hourly rate for all hours worked in excess of 40 hours per week. FLSA computes solely on the basis of 40 hours per week, whereas State rules and collective bargaining agreements provide for computation on the basis of hours per day. Overtime must be paid in cash or compensatory time off. If the later method is used, the employee may accumulate no more than 240 hours (160 hours worked x 1-1/2) of compensatory time off.
- d. Travel and other reasonable expense requirements or board, lodgings or other facilities furnished are not included in the computation of the rate of regular pay.

- e. Standby time is compensable if a person's activity while on standby is restricted; e.g., told to stay by the phone on a scheduled non-work day. It is not compensable if the employee is not restricted in his movements; e.g., only required to inform his/her supervisor where he/she can be reached or provided with a beeper.
- f. Shift differential is to be included as regular wages in computing FLSA overtime pay.
- g. If the employee is led to believe that attendance at a course lecture or meeting outside normal work hours is required for continued employment in his present position, the time actually spent in such training is considered compensable hours worked. Training undertaken by an employee after hours at his own initiative on a voluntary basis is not considered as compensable hours worked.
- h. Attendance or work records must be maintained for each employee covered under FLSA. The duty to keep accurate records is the absolute duty of the employer and cannot be delegated to the employee.
 - (1) State DPS forms and instructions for recording attendance and hours of work are attached (Attachments B-1 to B-3).
 - (a) State (DPS) Form 7 - Attendance and Leave Record - ANNUAL - is to be maintained for each employee (Attachment B-1).
 - (b) Instructions for preparing Form 7 (Attachment B-2).
 - (c) Comparative Examples - State Wage and Hour vs. Federal Fair Labor Standards Act - illustrates the differences between State law (including collective bargaining agreements) and FLSA when the provisions of each are applied to specific situations involving the 40 hours workweek and computation of overtime pay (Attachment B-3).
 - (2) These records must be retained for at least two years. (However, the State DPS requires that the records be held for five years.)

- i. To minimize confusion, in most cases, provisions of the FLSA should be examined and applied independent of any collective bargaining agreement. This is because FLSA provisions concerning a) what is a 40 hours work week, b) computation of overtime c) maximum compensatory time off accumulation, and other requirements differ from those included in a collective bargaining agreement. Thus, compliance with FLSA does not necessarily mean that the terms of the collective bargaining agreement have been met and vice-versa. For example, civil service and APT employees covered by FLSA are not entitled to overtime pay when they work on a paid holiday, since a paid holiday does not count hours worked for FLSA purposes (only 40 hours of work is credited). This is in contrast to collective bargaining agreements which provided for overtime compensation in this instance, as a paid holiday is considered hours worked.

Attachment A

GUIDELINES TO DETERMINATION OF EXEMPTION FROM FLSA

University Administrators must make individual determinations of exemption from provisions of the FLSA on a case-by-case basis and not on the basis of job titles or position descriptions which may not be updated. The general guidelines for such determination follow.

- I. There are three basic categories of "workers" who are not covered by FLSA because they do not fit the statutory definition of employee.

- A. Independent Contractors

- Contractor/customer relationship rather than employee/employer relationship. Work controlled by agency only to extent of task to be done, not as to means of doing the task.

- B. Trainees

- Non-paid student or intern type worker.

- c. Volunteers

- Individuals who volunteer their services, usually part-time, for public service without contemplation of pay. However, when paid more than a nominal fee, expenses or reasonable benefits, they become employees.

- II. In the public sector there are six categories of positions where the nature of those jobs authorize overtime exemptions. Of these only four are applicable to the University of Hawaii:

- A. Elective-Related Positions

- Elected officials of agencies and non-civil service system employees appointed by elected officials to work for them.

- B. Executive Positions

- The individual must meet all of the following requirements:

1. Weekly salary of \$250 or more (about \$1075 monthly).
2. Must customarily and regularly direct the work of two or more employees.
3. Primary duty is management of the enterprise or a customarily recognized department or subdivision thereof. In general, the decision is based upon whether or not the employee spends more than 50% of his time functioning as a manager. Time alone, however, is not the only test. Some other factors to consider are:
 - a. The relative importance of the managerial duties as compared with other types of duties; and,
 - b. The frequency with which the employee exercises discretionary powers; and,
 - c. The relative freedom from supervision.

Some examples of recognized management duties are:

- (1) Interviewing, selecting, and training of employees.
- (2) Adjusting rates of pay and hours of work.
- (3) Directing work.
- (4) Handling complaints or grievances and discipline.
- (5) Apportioning work.

C. Administrative Positions

The employee must be paid a salary of \$250 or more per week; and,

1. The primary duty consists of responsible office or non-manual work directly related to management policies or general business operations requiring the exercise of discretion and independent judgement, such as

An executive secretary who "screens" incoming mail and determines whether to answer correspondence personally or call it to the attention of her "boss" or other addressee, which task does not constitute the use of discretion.

A computer systems analyst who develops methods to process accounting information uses discretion and independent judgment; the data process employee who "debugs" a program or prepares instructions to the console operator does not.

OR

2. Employee does responsible work in the administration of a school or educational establishment or institution or department or subdivision thereof that is directly related to academic instruction or training.

Some typical examples of positions are:

- . Administrative assistants who assist an executive/manager in the performance of the manager's duties; e.g., Assistant to the Director, Executive Secretary
- . Staff specialist positions who advise management, e.g., Personnel Officer, Budget Analyst
- . One-Person staff department managers, e.g., Procurement Specialist

D. Professional Positions

1. The employee must be paid a salary of \$250 or more per week; and
2. Must perform work requiring knowledge of an advanced type in a field of science or learning. Work performed requires consistent exercise of discretion and judgement and is predominantly intellectual and varied in character. Generally speaking, the professionals which meet the requirement for a prolonged course of specialized intellectual instruction and study include law, medicine, nursing, accountancy, actuarial

computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, including pharmacy and registered or certified medical technology. The typical symbol of the professional and the best prima facie evidence of its possession is the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not universal) prerequisite.

All faculty are exempted under this provision.

LEAVE RECORD

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INSTRUCTION FOR COMPLETING DPS FORM 7, LEAVE RECORD

1. Enter last name, first and middle initial.
2. Enter social security number.
3. Enter UH,--College, School, Institution, etc.
4. Enter position number.
5. Enter payroll number.
6. Enter bargaining unit code.
7. Enter FTE if less than 100% time. (eg. 50%+)
8. Enter applicable calendar year.
9. Enter balance from previous calendar year.
10. Enter hours taken for each applicable month.
11. Enter hours earned for each applicable month.

Note: Report sick leave earned by Community Colleges faculty in the following manner:

- . For faculty on calendar year appointment: Enter hours earned each month.
 - . For faculty on academic year appointment: Enter hours earned at beginning of academic year (or pro rata amount in the appropriate month for the remainder of the year if appointed late).
12. Enter balance for each applicable month.
 13. If employee is hired after the 1st of a month, enter "X" on date of hire and indicate date of hire.
 14. Enter "X" on date employee terminates or retires and indicate date of termination.

COMPARATIVE EXAMPLES

STATE WAGE & HOUR VS. FEDERAL FAIR LABOR STANDARDS ACT

S (5/5)	M (5/6)	T (5/7)	W (5/8)	T (5/9)	F (5/10)	S (5/11)	WORKED
0	4 Work	8 Sick	12 Work	12 Work	12 Work	0	40 Hrs.

FLSA - Not applicable.

State - 12 hours overtime pay or comp. time.

S (5/12)	M (5/13)	T (5/14)	W (5/15)	T (5/16)	F (5/17)	S (5/18)	WORKED
0	4 Work 4 Sick	8 Sick	13 Work	13 Work	13 Work	0	43 Hrs.

FLSA - 3 hours overtime - Pay or comp. time.

State - 15 hours overtime - 3 hours under FLSA - 12 hours pay or comp. time.

S (5/19)	M (5/20)	T (5/21)	W (5/22)	T (5/23)	F (5/24)	S (5/25)	WORKED
0	9 Work	10 Work	8 Work	8 Work	10 Work	(Standby)	45 Hrs.

FLSA - 5 hours overtime pay or comp. time.

\$2.00/Hr.

Standby - 25% of daily wage (.25 x 16.00 = 4.00)

FLSA - Overtime figured on the earnings for the week which includes standby pay:

2.00 x 45 hours = \$90.00 + \$4.00 (standby) = \$94.00 - 45 hours = 2.09/hr regular rate for overtime. Hence, \$2.09 plus \$1.05 x 5 hours = \$15.70 - monetary value of the overtime work.

S (5/26)	M (5/27)	T (5/28)	W (5/29)	T (5/30)	F (5/31)	S (6/1)	WORKED
0	8 Work	8 Work	8 Work	8 Work	10 Work	0	42 Hrs.

FLSA - 2 hours overtime pay or comp. time.

State - 2 hours overtime pay or comp. time.

S (6/2)	M (6/3)	T (6/4)	W (6/5)	T (6/6)	F (6/7)	S (6/8)	WORKED
0	8 Work	9 Work	10 Work	1 Sick 7 Work	2 Jury Duty 6 Work	0	40 Hrs.

FLSA - Not applicable.

State - 3 hours overtime - pay or comp. time.