
Chapter 2 – Classification & Compensation

14. Workweek

A fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods that is established by the LDSS; the workweek may be uniform for all employees, or it may differ for different positions or employees. The workweek does not have to coincide with the calendar week, but instead it may begin on any day of the week and at any hour of the day. The LDSS establishes the workweek for each position.

B. Hours of Work

1. Definition of Work

All hours that an employee is required, or permitted, to engage in activities that involve mental or physical exertion on behalf of or for the benefit of the LDSS, **regardless of whether the employee is exempt or non-exempt.** This includes all time that the employee is required to be on the premises of the LDSS or at some prescribed place (e.g., home visits or court) or that an employee is required or permitted to work (e.g., working at home or staying after hours at the office).

2. All Work Must Be Counted as Hours Worked

The general rule is that if the LDSS knows or has reason to believe that an employee is performing work, the time must be recorded as hours worked whether the employee volunteered to perform the work or was just dropping something off on the way home. Accordingly, employees cannot “volunteer” their time to perform extra duties or duties outside normal work hours without reporting them as hours worked

a. Work Activities

Activities that are generally considered “work” may include:

- (1) Waiting time if the employee cannot use the time effectively for his or her own purposes such as when an employee is not relieved of all duties (e.g., “Receptionist listens for the phone at the employer’s front desk while waiting”).
 - (2) **The local director may grant employees who work an eight-hour day or longer a maximum of one 15-minute rest break before and one 15-minute rest break after the required meal period. Rest breaks are included on timesheets as hours worked.**
 - (3) **Meal periods of less than 30 minutes are included on timesheets as hours worked.**
 - (4) Pre-shift and post-shift activities required by the LDSS.
 - (5) Required training.
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- (6) LDSS required medical examinations.
- (7) Grievance activity.
- (8) Time actually worked while on call.
- (9) All activities performed for the benefit of the employer during regularly scheduled hours (e.g., travel to work locations or training). Note: Determinations are always very fact specific and should be considered on a case-by-case basis.

b. Non-work Activities

Activities that are related to a job but are not considered work include:

- (1) Time spent in civic and charitable activities (if not under the employer's request or direction);
- (2) Voting time;
- (3) On call, waiting to be engaged, if the employee's activities while on call are not unduly restricted; and
- (4) Home to work travel.
- (5) Time exceeding 15 minutes during a rest break is not included on timesheets as hours worked.
- (6) Meal periods 30-60 minutes in length shall not be included on timesheets in the count of hours worked per day unless the supervisor has designated the lunch break as part of the work schedule. When employees are required to work during their lunch, that period shall be included on timesheets as hours worked.

c. Volunteered Labor

A non-exempt employee cannot "volunteer" time to work beyond scheduled work hours. Nor should an employee change the hours worked without permission of the supervisor.

3. Hours Actually Worked

Hours actually worked do not include the following special situations:

a. Occasional and Sporadic Work for Same LDSS

All employment for the same LDSS, whether in one or more capacities, counts towards the hours worked. For public employers there is an exception when the

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- (2) If a non-exempt employee elects to drive to an overnight assignment instead of using offered public transportation, the LDSS has the option of counting as hours worked the lesser of the actual time spent by the employee in driving or the time that would have been expended if the employee used public transportation.

5. Recording Hours Worked

It is the responsibility of the LDSS to record all time actually worked and to maintain the records required under the FLSA. Although the LDSS can require the non-exempt employee to record his or her hours worked, the employee's failure to do so does not relieve the LDSS of the responsibility to record such time. Hours worked may be recorded in as small an increment as time records are kept; e.g., by fifteen minutes. Rounding to the nearest increment is permissible, provided it is done consistently in the same manner.

When an employee is on a job for a longer or shorter period of time than the weekly schedule of the LDSS, the record must accurately reflect the number of hours the employee actually worked based on the weekly schedule chosen by the LDSS (e.g., 40 hours, 37.5 hours, 35 hours). Employees must only be compensated for the number of hours actually worked.

C. Overtime (see Section III for FLSA exemption information)

1. Overtime Pay

For each hour worked over forty hours in a workweek, a non-exempt employee receives overtime pay in the amount of 1.5 times the regular rate of pay. An exempt employee is not entitled to overtime pay or compensatory time.

2. Calculating Regular Rate of Pay

The regular rate of pay equals the employee's total weekly pay divided by the total hours worked. If an employee is paid an hourly rate, that regular rate is generally the same as the hourly rate; but if additional compensation is provided, e.g., extra payment for being on call, that compensation must be added to the total weekly compensation.

For salaried employees, the regular rate of pay is the salary divided by the number of hours that the salary is intended to compensate. The FLSA allows other methods of compensation, such as a fixed salary for fluctuating hours of work that would affect the amount of the regular rate of pay. If an LDSS has a lot of overtime, these alternative methods of salary payments may be used.

3. Compensatory Leave

At the option of the local director and prior to overtime hours worked, a non-exempt

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made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

F. FLSA Recordkeeping Requirements

The FLSA requires employers to keep records on wages, hours, and other items; these records do not have to be kept in any particular form and time clocks are not required to be used. The records kept for both exempt and non-exempt employees must accurately reflect both the weekly schedule chosen by the LDSS (e.g., 40 hours, 37.5 hours, 35 hours) and that employees are only compensated for the number of hours actually worked.

1. The Following Records Must Be Kept For Non-Exempt Employees

- a. When non-exempt employees are not on a fixed and regularly recurring work schedule:
 - personal information, including employee's name, home address and zip code, occupation, sex, and birth date if under 19 years of age;
 - hour and day when workweek begins;
 - hour and day when workweek ends;
 - total hours worked each workday and each workweek;
 - total daily or weekly straight-time earnings;
 - regular hourly pay rate for any week when overtime is worked;
 - total overtime pay or compensatory time for the workweek;
 - deductions from or additions to wages;
 - total wages paid each pay period;
 - date of payment and pay period covered; and
 - amount and nature of each payment excluded from regular rate of pay.
- b. If a non-exempt employee is on a fixed work schedule the following simplified record keeping process may be used: records of daily and weekly hours worked are not required if the employer shows the fixed schedule of daily and weekly hours and indicates on the weekly time sheet either:
 - that a check mark for the days and weeks that the schedule was adhered to;