



OKLAHOMA POLICY GUIDELINES

FLSA

THE UNITED STATES FAIR LABOR STANDARDS ACT

Updated 2020



STATE OF OKLAHOMA

OMES Human Capital Management

FLSA Policy Guidelines

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INTRODUCTION

On Feb. 19, 1985, the Supreme Court of the United States, in the decision on *Garcia V. San Antonio Metropolitan Transit Authority*, placed the State of Oklahoma in a position of liability with regard to the wage and hour provisions of the Fair Labor Standards Act of 1938 as amended. Previous to the February 1985 opinion, the employees of the state were exempted from the provisions of the federal law related to minimum wages, maximum hours and overtime. Further, the state was generally exempted from the record keeping aspects of the federal law and the regulations issued pursuant to the law. As a result of the court decision, the State of Oklahoma falls under the provisions of the act. Our primary consideration is to ensure compliance with the federal law and the FLSA.

On Nov. 13, 1985, President Ronald Reagan signed into law a bill which was designed to lessen the impact of the FLSA on states and local governments. Under this law (P.L.99-150), the FLSA was amended to allow the use of compensatory time, clarify the use of volunteers and delay coverage of the act for traditional functions of states and local governments.

In 2002, in response to widespread criticism that the rules pertaining to exemptions were seriously outdated, the secretary of labor reaffirmed the DOL's commitment to changing the rules; and on March 31, 2003, the department published proposed new regulations covering white-collar, or exempt, employees. A 90-day comment period was provided, during which the department received 75,280 comments from a wide variety of employees, employers, trade and professional associations, small business owners, labor unions, government entities, law firms and others. In addition, the department's proposal prompted vigorous public policy debate in Congress and the media. After carefully considering all of the relevant comments, the department made numerous changes, resulting in the final rule published on April 23, 2004. This final rule became effective on Aug. 23, 2004, 120 days after being published in the Federal Register.

On May 25, 2007, President George W. Bush signed into law a supplemental appropriation bill (H.R. 2206), which contains the **Fair Minimum Wage Act of 2007**. This provision amended the FLSA to provide for the increase of the federal minimum wage by an incremental plan, culminating in a minimum wage of \$7.25 per hour by July 24, 2009.

Also, Section 4207 of the **Patient Protection and Affordable Care Act** (H.R.3590) amends Section 7 of the FLSA to add that employers shall provide break time for nursing mothers to express milk and that "a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public" should be available for employees to express milk.

The Policy Guidelines: Fair Labor Standards Act has been designed to provide an overview of and reference to the provisions of the act and the corresponding federal and state regulations. This guide is not a comprehensive listing of the FLSA (29 U.S.C. 201 et. seq.) and regulations promulgated thereunder or the Oklahoma Merit Rules on payment of overtime (OAC 260:25-7-12) and is not intended to conflict with the act, the regulations or the Merit Rules. A copy of each agency's overtime policy shall be made available by the appointing authority to interested

persons upon request and the appointing authority shall so notify employees. Copies of such policy shall be forwarded to OMES Human Capital Management.

I. Policy Statement

It is the policy of the State of Oklahoma to adopt and implement the provisions of the Fair Labor Standards Act as the basic overtime policy of the state (§ 61-3 and § 74-840-2.15). Any overtime work necessary to the continued effective operations of the state should be managed in the most efficient and economical manner possible.

In order to facilitate the implementation of this policy, the administrator of OMES Human Capital Management issues these guidelines to assist each state agency in implementing the overtime provisions of the FLSA for its specific programs and workforce.

Additionally, the guidelines include information to facilitate the development and implementation of agency policy that will control and limit the use, allotment or compensation of overtime within the state service that is consistent with federal law and the policy of the State of Oklahoma.

After reviewing the guidelines, each agency, institution, board and commission shall submit a comprehensive overtime policy to OMES Human Capital Management that is substantially in accordance with these guidelines (Merit Rule 260:25-7-12(a)).

Agency heads and supervisors shall limit hours worked by the employee to the employer's established work periods, as defined by the FLSA, except in those cases where additional hours of work are necessary because of weather conditions, seasonal activity or emergencies. It shall be the responsibility of each agency to determine that the use of overtime is administered in the best interest of the state. Although each agency head is responsible for the manner in which overtime is authorized, it is equally important to control unauthorized overtime. Unauthorized work shall be counted as hours worked if the employer should have stopped it but did not, or if they know or have reason to know of the work. Each agency is responsible for internal controls that will provide a means of reviewing and evaluating the use of overtime. Such review should take into consideration organizational structure, scheduling of work, position complement and personnel classifications.

II. Overview of the Fair Labor Standards Act

The Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), establishes minimum wage, overtime, record keeping and other requirements. In 1974, the FLSA was amended to extend coverage to state and local governments.

The FLSA is enforced by the United States Department of Labor. The secretary of labor is authorized to investigate employers and institute litigation to recover unpaid wages and overtime. Where a recovery is made, liquidated damages, attorney's fees and court costs are usually assessed.

Under this act, overtime at a rate of one and one-half times the employee's basic rate of pay must be paid for work in excess of 40 hours in any workweek. Each workweek must be considered separately when computing overtime. There are certain exemptions from the coverage of the act for employees who work in an executive, administrative, professional or computer capacity. There also are special overtime rules for employees of public agencies who work in firefighting or law enforcement activities, including working in correctional institutions.

The FLSA requires payment of wages for all time that an employee is required or permitted to work. Under this concept, employees who voluntarily work before or after their assigned shifts would be entitled to payment. All that is required is that the employer knows or has reason to believe that they are working. Management has the duty of ensuring that such work does not occur unless authorized.

The Department of Labor has issued a large amount of interpretive material on the FLSA. This material can be found in Volume 29, Code of Federal Regulations, Parts 500 to 899 or on the Department of Labor website at <http://www.dol.gov>.

III. Fair Labor Standards Act Job Categories

The FLSA recognizes two basic categories of jobs:

- Exempt – those employees not covered by the act.

The exempt category consists of four subordinate categories that are applicable to the state services:

1. Executive employees.
2. Administrative employees.
3. Professional employees.
4. Computer employees.

- Nonexempt – those employees covered by the act.

FLSA requirements apply to positions and employees – not to job families. However, OMES Human Capital Management job family descriptors can serve as a general guide in determining whether individual positions are exempt or nonexempt under the provisions of the FLSA. All state classifications will be identified as follows:

- E – exempt.
- N – nonexempt.

This identification system is to be used as a tentative guide only. Each individual position within a job family level identified as exempt or nonexempt must be analyzed by agency staff to determine whether or not it is exempt. Appendix A provides a listing of the state classifications and the tentative identification of exempt or nonexempt status.

Agencies that do not have job family descriptors should develop such specifications before determining the exempt or nonexempt status of groups of jobs.

A. Exemptions

Unlike most other exemptions under the FLSA, the white-collar exemptions cut across classifications. Virtually every employer under the law faces the problem of deciding which white-collar workers may qualify for an exempt status.

The law exempts certain categories from both minimum wage and overtime requirements: executives, administrative employees and professional employees. The secretary of labor is authorized to define and delineate these exempt categories. The secretary's definitions are set forth in 29 CFR 541.0-6. The Department of Labor policy has the force of law as long as it is not set aside by the courts as arbitrary or capricious.

The exemptions provided by FLSA Section 13(a)(1) apply only to white-collar employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other blue-collar workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, nonmanagement employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremens, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

A basic rule in applying the white-collar exemption is that bona fide executive, administrative and professional employees (including academic administrative personnel or teachers) are exempt from the minimum wage and overtime requirements of the act if they meet all of the tests set for each category.

Whether an employee is exempt depends on their duties, responsibilities and whether or not they are paid on a salaried basis.

Any employee who is paid at least the minimum salary specified and who also meets all the duties and responsibilities specified is exempt from the minimum wage and overtime pay requirements of the law. An honorific title does not make an employee exempt; nor is an employee exempt simply because they are salaried.

Typical examples of exempt duties:

- Interviewing, selecting and training employees.
- Setting and adjusting pay rates and work hours.
- Directing work.
- Keeping production records of subordinates for use in supervision.
- Evaluating employees' efficiency and productivity.
- Handling employees' complaints.
- Disciplining employees.
- Planning work.
- Determining techniques.
- Distributing work.

- Deciding on type of materials, supplies, machinery or tools.
- Controlling flow and distribution of materials and supplies.
- Providing for safety of employees and property.

Typical examples of nonexempt duties:

- Performing the same kind of work as subordinate employees.
- Performing any production work, even though not like that performed by subordinate employees, which is not part of supervisory functions.
- Replenishing stocks, returning stock to shelves, except for supervisory training or demonstration purposes.
- Performing routine clerical duties, such as bookkeeping, billing, filing and operating business machines.
- Checking and inspecting goods as a production operation, rather than as a supervisory function.
- Keeping records for employees not under their supervision.
- Preparing payrolls.
- Performing maintenance work.
- Repairing machines, as distinguished from an occasional adjustment.
- Cleaning around machinery, or taking an employee's place at the workbench.

1. Executive Employees

To qualify for the executive employee exemption, all of the following tests must be met (29 CFR 541.100):

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week.
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise.
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent.
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Primary Duty

Primary duty means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Time alone is not the sole test, and nothing in the regulations requires exempt employees to spend more than 50% of their time performing exempt work. Factors to consider when determining primary duty may include, but are not limited to, relative importance of exempt duties as compared with other types of duties, amount of time spent performing exempt work, employee's relative freedom from direct supervision, and relationship between the employee's salary and wages compared to other employees for the kind of nonexempt work performed by the employee (29 CFR 541.700).

Management

Generally, management includes, but is not limited to, activities such as interviewing, selecting and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures (29 CFR 541.102).

Department or Subdivision

The phrase, "a customarily recognized department or subdivision," is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function (29 CFR 541.103 (b),(c)).

Customarily and Regularly

The phrase, “customarily and regularly,” means greater than occasional but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks (29 CFR 541.103 (a)).

Employees

The phrase, “two or more other employees,” means two full-time employees or their equivalent. For example, one full-time and two half-time employees are equivalent to two full-time employees. The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. For example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each supervisor directs the work of two of those workers (29 CFR 541.104).

Particular Weight

Factors to be considered in determining whether an employee’s recommendations as to hiring, firing, advancement, promotion or any other change of status are given particular weight include, but are not limited to, whether it is part of the employee’s job duties to make such recommendations, and the frequency with which those recommendations are made, requested and relied upon. Generally, an executive’s recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include occasional suggestions. An employee’s recommendations may still be deemed to have particular weight even if a higher-level manager’s recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee’s change in status (29 CFR 541.105).

2. Administrative Employees

To qualify for the administrative employee exemption, the employee must meet all the following tests (29 CFR 541.200):

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week.
- The employee's primary duty must be the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers.
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Primary Duty

Primary duty means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Time alone is not the sole test, and nothing in the regulations requires exempt employees to spend more than 50% of their time performing exempt work. Factors to consider when determining primary duty may include, but not limited to, relative importance of exempt duties as compared with other types of duties, amount of time spent performing exempt work, employee's relative freedom from direct supervision, and relationship between the employee's salary and wages compared to other employees for the kind of nonexempt work performed by the employee (29 CFR 541.700).

Directly Related to Management or General Business Operations

To meet the directly related to management or general business operations requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example from working on a manufacturing production line or selling a product in a retail or service establishment. Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities (29 CFR 541.201 (a)).

Employer's Customers

An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, employees acting as advisors or consultants to their employer's clients or customers – as tax experts or financial consultants, for example – may be exempt (29 CFR 541.201 (c)).

Discretion and Independent Judgment

In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term must be applied in the light of all the facts involved in the employee's particular employment situation, and implies that the employee has authority to make an independent choice, free from immediate direction or supervision. Factors to consider include, but are not limited to, whether the employee has authority to formulate, affect, interpret or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval, and other factors set forth in the regulation. The fact that an employee's decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources (29 CFR 541.202).

Matters of Significance

The term, "matters of significance," refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer (29 CFR 541.202 (d)).

3. Professional Employees

Learned Professional Exemption

To qualify for the learned professional employee exemption, all of the following tests must be met (29 CFR 541.301):

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week.
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment.
- The advanced knowledge must be in a field of science or learning.
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Primary Duty

Primary duty means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Time alone is not the sole test, and nothing in the regulations requires exempt employees to spend more than 50% of their time performing exempt work. Factors to consider when determining primary duty may include, but not limited to, relative importance of exempt duties as compared with other types of duties, amount of time spent performing exempt work, employee's relative freedom from direct supervision, and relationship between the employee's salary and wages compared to other employees for the kind of nonexempt work performed by the employee (29 CFR 541.700).

Work Requiring Advanced Knowledge

Work requiring advanced knowledge means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment. Professional work is therefore distinguished from work involving routine mental, manual, mechanical or physical work. A professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level (29 CFR 541.301 (b)).

Field of Science or Learning

Fields of science or learning include law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status and are distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in a field of science or learning (29 CFR 541.301 (c)).

Specialized Intellectual Instruction

The learned professional exemption is restricted to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best evidence of meeting this requirement is having the appropriate academic degree. However, the word customarily means the exemption may be available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. This exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction (29 CFR 541.301 (d)).

Creative Professional Exemption

To qualify for the creative professional employee exemption, all of the following tests must be met (29 CFR 541.302):

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week.
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Invention, Imagination, Originality or Talent

This requirement distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. Exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Whether the exemption applies, therefore, must be determined on a case-by-case basis. The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists and others as set forth in the regulations. Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent. Journalists are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product (29 CFR 541.302 (c)).

Teachers

Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers. The salary and salary basis requirements do not apply to bona fide teachers (29 CFR 541.303).

Practice of Law or Medicine

An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice. An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession. The salary and salary basis requirements do not apply to bona fide practitioners of law or medicine (29 CFR 541.304).

4. Computer Employees

To qualify for the computer employee exemption, the following tests must be met (29 CFR 541.400):

- The employee must be compensated either on a salary or fee basis at a rate not less than \$684 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour.
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below.
- The employee's primary duty must consist of:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications.
 - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems.
 - A combination of the aforementioned duties, the performance of which requires the same level of skills.

Primary Duty

Primary duty means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Time alone is not the sole test, and nothing in the regulations requires exempt employees to spend more than 50% of their time performing exempt work. Factors to consider when determining primary duty may include, but not limited to, relative importance of exempt duties as compared with other types of duties, amount of time spent performing exempt work, employee's relative freedom from direct supervision, and relationship between the employee's salary and wages compared to other employees for the kind of nonexempt work performed by the employee (29 CFR 541.700).

Computer Manufacture and Repair

The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption (29 CFR 541.401).

5. Miscellaneous

Highly Compensated Employees

Highly compensated employees performing office or nonmanual work and paid total annual compensation of \$107,432 or more (which must include at least \$684 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard duty tests for exemption (29 CFR 541.601).

Trainees

The professional exemption does not apply to employees training for employment in an executive, administrative or professional capacity who are not actually performing the duties of a professional employee (29 CFR 541.705).

B. Salary Test

1. Salary Basis Requirement

To qualify for exemption, employees generally must be paid at not less than \$684 per week on a salary basis. These salary requirements do not apply to outside sales employees, teachers and employees practicing law or medicine. Exempt computer employees may be paid at least \$684 on a salary basis or on an hourly basis at a rate not less than \$27.63 an hour.

Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee's predetermined salary, e.g., because of the operating requirements of the business, that employee is not paid on a salary basis. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available (29 CFR 541.602 (a)).

2. Permissible Employer Deductions in Salary

Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; to offset amounts employees receive as jury or witness fees, or for military pay; for penalties imposed in good faith for infractions of safety rules of major significance; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. Also, an employer is not required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act (29 CFR 541.602 (b)).

3. Exemption for Employees of Public Agencies

An employee of a public agency who otherwise meets the requirements of Sec. 541.602 shall not be disqualified from exemption under Sections. 541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:

- Permission for its use has not been sought or has been sought and denied.
- Accrued leave has been exhausted.
- The employee chooses to use leave without pay.

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced (29 CFR 541.710).

4. Effect of Improper Deductions from Salary

The employer will lose the exemption if it has an actual practice of making improper deductions from salary. Factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting deductions; the time period during which the employer made improper deductions; the number and geographic location of both the employees whose salary was improperly reduced and the managers responsible; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions. If an actual practice is found, the exemption is lost during the time period of the deductions for employees in the same job classification working for the same managers responsible for the improper deductions. Isolated or inadvertent improper deductions will not result in loss of the exemption if the employer reimburses the employee for the improper deductions (29 CFR 541.603).

Safe Harbor

If an employer (1) has a clearly communicated policy prohibiting improper deductions and including a complaint mechanism, (2) reimburses employees for any improper deductions, and (3) makes a good faith commitment to comply in the future, the employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing the improper deductions after receiving employee complaints (29 CFR 541.603 (d)).

IV. Record Keeping

A. The Record-Keeping Requirements

All employers subject to the act are required by Section 11(c) to make and preserve employment records in accordance with regulations issued by the administrator. These regulations require no particular form of records, but they specify in detail the information that the records must contain for various types of employees. (29 CFR 516.2-.9).

In general, the data required to be kept for each employee are these: full name, with any identifying number; home address, birth date, if under 19; occupation; day and hour when employee's workweek begins; regular hourly rate of pay, basis on which wages are paid, and nature and amount of each payment excluded from regular rate under Section 7(d); hours worked each workday and each workweek; total daily or weekly straight time earnings; total weekly premium pay for overtime; total additions to or deductions from wages paid each pay period; total wages paid each pay period; and date of payment and pay period covered (29 CFR 516.2). Production of such records may be required on motion in the federal courts, as well as by exercise of the administrative subpoena powers.

The regulations require that the employer preserve and keep available for inspection and transcription by the Wage and Hour Division (a) for a period of three years, all payroll or other records containing the required data, plus union contracts and other basic employment records; and (b) for a period of two years, various supplementary records – such as customer orders and bills of lading – employee time cards, production tables and rate schedules. In addition, the employer is required to keep posted in conspicuous places, notices that have been prescribed by the administrator as being applicable under the act. (29 CFR 516.4-6).

B. Time Keeping

The work for which nonexempt employees must be paid at least the minimum wage and which must be counted in computing liability for weekly overtime pay includes all the time an employee is actually at work or is required to be on duty and cannot use the time for their own purposes. Not all time needs to be counted as working time. Activities such as bona fide meal periods, for example, are not regarded as working time. There is not a limitation on the number of hours that may be worked so long as employees are paid at time and one-half their regular rate for all hours worked above 40 in any workweek.

1. Meals

A bona fide meal period is a span of at least 30 consecutive minutes (never less) during which an employee is completely relieved of duty and free to use the time for their own purposes. It is not counted as hours worked or paid time. Any so-called meal period of less than 30 consecutive minutes must be paid as hours worked. It is not necessary that an employee be permitted to leave the premises during the meal period. However, the time will have to be counted as time

worked if the employee is required or permitted to perform any duties while eating (29 CFR 785.19).

2. Rest or Break Periods

There are no requirements for breaks or rest periods in the FLSA. However, rest periods of short duration, running from five to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time (29 CFR 785.18).

3. Training

Time spent by nonexempt employees attending lectures, meetings and training programs sponsored by the employer is generally considered time worked. However, it does not have to be counted as hours worked provided all four conditions are met (29 CFR 785.27-.31):

- The meetings are held outside working hours.
- Attendance by employees is truly voluntary.
- The course, lecture or meeting is not directly related to the employee's job.
- The employee doesn't perform any other work during training attendance.

4. Travel

Whether travel time is considered as hours worked depends on the circumstances.

a. Home to Work in Ordinary Situations

An employee who travels from home before the regular workday and returns home at the end of the workday is engaged in ordinary home to work travel which is a nonmanual incident of employment. This is true whether they work at a fixed location or at different job sites. Normal travel from home to work is not work time (29 CFR 785.35).

b. Home to Work in Emergency Situations

There may be instances when travel from home to work is overtime. For example, if an employee who has gone home after completing their day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of their employer's customers all time spent on such travel is working time. The divisions are taking no position on whether travel to the job and back home by an employee who receives an emergency call outside of his regular hours to report back to his regular place of business to do a job is working time (29 CFR 785.36).

c. Home to Work on Special One-Day Assignment in Another City

When an employee who regularly works at a fixed location in one city is given a special one-day assignment in another city, such travel cannot be regarded as home to work travel. For example,

an employee who works in Oklahoma City with regular working hours from 8 a.m. to 5 p.m., may be given a special assignment in another city, with instructions to leave Oklahoma City at 7 a.m. They arrive at noon, ready for work. The special assignment is completed at 3 p.m. and the employee arrives back in Oklahoma City at 8 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the state's benefit and at the state's request to meet the needs of the particular assignment. It would, therefore, qualify as an integral part of the principal activity which the employee was hired to perform on that particular workday. All the time involved, however, need not be counted as work time. Since, except for the special assignment, the employee would have had to report to their regular work site, the travel between home and the airport or the usual time required to travel from home to work may be deducted, such time being in the home-to-work category. The usual meal time would also be deductible (29 CFR 785.37).

d. Travel All in the Day's Work

Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. When an employee is required to report at the employer's premises, or at a meeting place, to receive instructions or to perform other work there, the travel time from this designated place to work place is part of the day's work and must be counted as hours worked. If an employee normally finished work at a particular job site at 5 p.m., and is required to go to another job which is finished at 8 p.m., and is required to return to the employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to the employer's premises, the travel after 8 p.m. is home-to-work travel and is not counted as hours worked (29 CFR 785.38).

e. Travel Away from Home Community

Travel that keeps an employee away from home overnight is travel away from home. Travel time away from home community is work time when it cuts across the employee's regular scheduled workdays. The time is not only hours worked on regular working days, during normal working hours, but also during the corresponding hours on nonworking days. Therefore, if an employee regularly works from 8 a.m. to 5 p.m., Monday through Friday, the travel time during these hours is work time on Saturday and Sunday, as well as on the other days. Regular meal period time is not counted. That time spent in travel, away from home, outside of regular working hours (8 a.m.-5 p.m.) as a passenger on an airplane, train, bus or automobile is not considered as work time (29 CFR 785.39).

The example below will help explain the accountability for travel time away from home community.

Example:

An employee who has headquarters in Oklahoma City leaves for Amarillo on Sunday afternoon at 2 p.m., and arrives in Amarillo at 7 p.m.

- The three hours traveled between 2-5 p.m. are hours worked and must be included in the total hours worked within the workweek. If the total hours worked exceeds 40 per week, the employee is to be compensated in accordance with the state's overtime payment

policy.

- The two hours traveled between 5-7 p.m. are not considered as time worked for the purpose of determining total hours worked.

Time spent by an employee who is engaged in driving a vehicle, either a vehicle provided by the employer or owned by the employee, to and from another city for the benefit of the employer, is considered time worked. In the example above, all of the time from 2-7 p.m. spent driving would be considered compensable.

f. Multiple Work Locations

All nonexempt employees who are required to travel from one work location to another work location to perform services for the agency, including training assignments and attendance at meetings, will be paid in accordance with the legal regulations.

All time spent in such travel is considered time worked under the following circumstances:

- When the employee is required to travel to and from another city in the same workday.
- When the employee is required to travel from one work site to another, after reporting for the day's work.
- When the employee is required to travel to and from a work location that keeps the employee away from home overnight, if work is performed while traveling.
- When travel is within normal working hours in any day of the week.

Normal meal periods and the time that it would normally take the employee to travel from home to the regular work site and home again will be excluded, however, when determining working time during such travel.

g. Travel in a Private Vehicle

If an employee is offered public transportation, but requests to drive their own car instead, the employer is required to count only those hours worked during working hours that would have occurred had the employee used the public conveyance (29 CFR 785.40).

h. Work Performed While Traveling

Any work that an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer (29 CFR 785.41).

5. Sleep Time

a. Duty of Less Than 24 Hours:

Under certain conditions an employee is considered to be working even though some of their time is spent in sleeping or in certain other activities. Thus, an employee who is required to be on duty for less than 24 hours is working even though the employee is permitted to sleep or engage in other personal activities when not busy. It makes no difference if the employee is furnished facilities for sleeping. The employee's time is given to the employer. The employee is required to be on duty and the time is work time (29 CFR 785.21).

b. Duty of 24 Hours or More:

Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period is of more than eight hours, only eight hours will be credited. Where no expressed or implied agreement to the contrary is present, the eight hours sleeping time and lunch periods constitute hours worked. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the division has adopted the rule that if the employee cannot get at least five hours sleep during the scheduled period the entire time is working time (29 CFR 785.22).

c. Employees Residing on Employer's Premises or Working at Home:

An employee who resides on the employer's premises on a permanent basis or for extended periods of time is not considered as working all the time the employee is on the premises. Ordinarily, the employee may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining and other periods of complete freedom from all duties when they may leave the premises for purposes of their own. It is, of course, difficult to determine the exact hours worked under these circumstances, and any reasonable agreement of the parties that takes into consideration all the pertinent facts will be accepted (29 CFR ~ 785.23).

6. Waiting Time

Whether any waiting time is compensable under the FLSA requires close scrutiny of all the facts. The question to be answered in all cases is whether the employee was engaged to wait, or waiting to be engaged. If the employee is engaged to wait, then that waiting time is compensable. The question must be answered with common sense and the general concept of the world or employment (29 CFR 785.14-.15).

The employees in the examples below are engaged to wait:

- A stenographer reads a book while waiting for dictation.

- A messenger works a crossword puzzle while awaiting an assignment.
- A fireman plays checkers while awaiting alarms.

Vacation, Sick Leave and Holidays

In determining the number of hours worked by an employee within a given week, time spent on vacation, sick leave and holidays will not be counted as time worked. Such time off must be included in straight time pay for nonexempt employees, but is not included in computing hours of work for overtime pay (929 CFR 778.102).

V. Establishment of the Workweek

A. Regular Workweek

A workweek is a regularly recurring period of 168 consecutive hours. The workweek need not coincide with the calendar week. It may begin any day of the week and any hour of the day, but it must in each case be established in advance. The workweek may be changed, but only if the change is intended to be permanent and is not made to evade the policy.

Overtime, under the Wage and Hour Law, must be paid for all hours over 40 worked by an employee in a workweek, except as provided in the sections below. If the workweek of different employees begins on different days, the payroll record of each employee should show the day and hour on which their workweek begins. Averaging of hours over a two- or three-week period is not permitted. An exception can be made where two workweeks overlap because of a change in the designated workweek. A workweek cannot be changed to circumvent the intent of the FLSA (29 CFR 778.105).

B. Hospitals

Hospitals and other institutions primarily engaged in the care of the sick, the aged or the mentally ill may use a work period of 14 consecutive days, in computing overtime pay, provided there is agreement in advance with the employees concerned. If a 14-consecutive-day work period is elected, overtime pay of at least one and one-half times the employee's regular rate of pay is due after eight hours in a workday or after 80 hours in a work period. The extra compensation provided by the premium rate paid after 8 hours in a day may be credited toward any overtime compensation payable for hours worked in excess of 80 hours in the 14-day work period (29 CFR 778.601).

C. Law Enforcement Activities

The term law enforcement activities refers to any employee (1) who is a uniformed or plainclothes member of a body of officers and subordinates who are empowered by 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 of arrest; and (3) who is presently undergoing or has undergone or will undergo on-the-job training 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 (29 CFR 553.211).

Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank or of their status as trainee, probationary or permanent employee, and regardless of their assignment to duties incidental to the performance of their law enforcement activities.

The phrase, "employees in law enforcement activities," also includes security personnel in correctional institutions. This includes any government facility maintained as part of a penal

system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime.

Employees of correctional institutions who qualify are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of work details). These employees are considered to be engaged in law enforcement activities regardless of their rank.

Because of the varied nature of law enforcement activities throughout the state it may not be possible for all law enforcement classifications to be considered under the same plans for overtime. Under the Wage and Hour Law two options are permissible (29 CFR 553.211).

- For schedules requiring a 40-hour workweek, the policies on hours of work and overtime pay for a 40-hour workweek will apply.
- For schedules requiring more than 40 hours in a workweek the following is permissible. The work period will consist of 28 consecutive days. In the workweek period of 28 consecutive days the employee shall receive, for tours of duty which in the aggregate, exceed 171 hours, compensation at a rate of one and one-half times the regular hourly rate at which employed.

The exempt or nonexempt status of law enforcement personnel will be determined under the terms of exemption for executive, administrative and professional employees as outlined above.

These limits are subject to change by the Wage and Hour Division. Those employees determined to be nonexempt must be compensated for all additional hours at one and one-half times the employee's regular rate of pay.

D. Fire Protection Employees

To be covered by the section 207(k) exemption for fire protection, an employee must meet all of the following tests (29 CFR 553.210):

- Be employed by an organized state or local fire department.
- Be trained in their duties.
- Have the legal authority and responsibility to engage in the prevention, control or extinguishments of fire.
- Perform activities during 80% or more of their working time that are required for and directly concerned with the prevention, control or extinguishments of fire, including:
 - Fire spotting or lookout activities.
 - Work involved in clearing fire breaks.
 - Administrative work.
 - Equipment maintenance.

- Lecturing on fire prevention.
- Attending community fire drills.
- Inspecting schools for fire hazards.
- Work as a trainee and probationary firefighting employee.

Firefighters employed by fire departments and those who work for forest conservation agencies or other public agencies, are covered. Not qualifying for the section 207(k) exemptions are civilian employees of fire departments or forest services, such as dispatchers, alarm operators, clerks, mechanics, camp cooks or stenographers. Under the Wage and Hour Law two options are permissible in calculation of overtime for fire protection employees.

- For schedules requiring a 40-hour workweek, the policies on hours of work and overtime pay for a 40-hour workweek will apply.

For schedules requiring more than 40 hours in a workweek the following is permissible. The work period will consist of 28 consecutive days. In the workweek period of 28 consecutive days, the employee shall receive, for tours of duty which in the aggregate exceed 212 hours, compensation at a rate of one and one-half times the regular hourly rate at which employed.

VI. Overtime Payment Calculation

A. Hours Worked

Generally, all time during which an employee is required, or permitted to be on the employer's premises on duty or at a prescribed work place, except for meals or other periods when they are free from duty, is considered as hours worked. This is even so if the duties are pleasurable rather than burdensome and even if no productive work is actually performed.

As a general rule, hours worked will include:

- All time during which an employee is required to be on duty on the employer's premises or at a prescribed work place.
- All time during which an employee is required or permitted to work, whether or not required to do so. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the workday to the end with the exception of periods when the employee is relieved of all duties for the purpose of eating meals.

B. Unauthorized Work

Hours worked by an employee without the employer's permission or contrary to instructions will be considered as hours worked. The burden is on the employer to exercise control of the work time.

C. Requirements – Regular Rate

Employees who come within the general coverage of the Wage and Hour Law and who are not specifically exempted from the overtime requirements must be paid time and one-half their regular rate for all hours worked in excess of the weekly maximum. The regular rate includes all remuneration for employment paid to, or on behalf of the employee except for certain payments excluded by law. Included in the regular rate are shift differential, on-call and longevity pay. Excluded are payments for rest periods or breaks, unworked holidays, annual leave and sick leave. The regular rate is a rate per hour although it is not required that employees be compensated on an hourly rate.

Overtime for an employee working in two positions with different rates of pay is paid at the rate for the position in which the overtime occurs.

D. On Call

Time spent by an employee who is required to remain on call on the employer's premises or so close, thereto, that the employee cannot use the time for their own purposes, is considered working time. Employees who are merely required to leave word as to where they may be reached or required to carry and respond to a pager are not on call in this sense. The fact that an

employee lives on the employer's premises and is on call for 24 hours a day does not mean that they are entitled to pay for all those hours. Such an employee has regular duties to perform but is not subject to work at any time except in the event of an emergency. Ordinarily, they have a normal night's sleep, ample eating time and may, during certain periods, come and go as they please. An agreement should be reached with an employee in this category as to the extent of duty which will make clear the time that should be considered as hours not worked. As a rule, allowance for eight hours sleep and three hours for meal periods might be reasonable, plus any other hours that the employee may be free of unnecessary restrictions of use of their time.

On-call pay is normally paid only when an employee is required to return to duty to perform work outside the employee's normal tour of duty. This type of on-call pay is not figured as part of the regular rate. If, however, on-call pay is included as part of the employees pay regardless of number of hours worked, sometimes considered inconvenience pay, then it must be considered as part of the regular rate.

E. Callback Pay

Title 74 Section 840-2.29 of the Oklahoma state statute requires that agencies compensate classified employees for a minimum of two hours work if the employee is required to report to work while on call. Employees are guaranteed compensation for each occasion in which a call back is made after having left the regular work station. The compensation may be in the form of compensatory time in lieu of cash payment. Unless compensation under this provision is for hours actually worked in excess of 40 hours in a workweek, the entitlement is to straight time compensation only.

F. Special Pay Provisions

In calculating the rate of overtime payment, it is necessary to include longevity pay, shift differential and on-call pay. Longevity pay is converted to an hourly figure by dividing the next anniversary payment by 2080 hours. For agencies paying a monthly on-call or shift differential, it is necessary to convert to an hourly figure by multiplying by 12 (the number of months) and dividing by 2080 (hours). The hourly rate for longevity pay and the special pay is divided by 2 and added to the half portion of the 1 1/2 times hourly rate. This figure is multiplied by the number of overtime hours worked (see Appendix B page 77 for longevity overtime pay computation.).

G. Time of Payment

There is no requirement that overtime compensation be paid weekly. The general rule is that overtime pay earned in a particular workweek must be paid on the regular payday for the period in which the workweek ends. If the correct amount of overtime pay cannot be determined until sometime after the regular pay period, the employer must pay the overtime compensation as soon after the regular pay period as practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment and in no event may payment be delayed beyond the next payday after such computation can be made.

H. Compensatory Time

Compensatory time, in lieu of overtime payment, may be given to nonexempt employees under certain conditions. Compensatory time at the rate of time and one-half may be given to a nonexempt employee for overtime hours worked in lieu of overtime payment subject to the following conditions:

1. An employee has 180 days to use accrued compensatory time following the pay period in which it was accrued. The balance of a nonexempt employee's compensatory time earned but not taken shall be paid to the employee.
2. The maximum compensatory time which may be accrued by a nonexempt employee shall be 480 hours (320 hours actual overtime worked) for those employees engaged in a public safety or firefighting activity and 240 hours (180 hours actual overtime worked) for all other nonexempt employees.
3. An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation for any additional overtime hours worked at the rate of one and one-half times their regular rate of pay for each overtime hour worked.
4. Payment for accrued compensatory time upon termination of employment with the agency shall be calculated at the average regular rate of pay for the final three years of employment, or the final regular rate received by the employee, whichever is higher.
5. Overtime and compensatory time are accrued by work period, as defined by the FLSA.
6. Compensatory time may not be transferred from one agency to another agency.
7. An employee's request to take compensatory time off shall be approved, unless the employee's absence on that day unduly disrupts agency operations or endangers public health, safety or property.
8. Accrued compensatory time must be exhausted before approving a nonexempt employee's request for annual leave, except when the employee is subject to lose said leave due to the accrual cap (Merit Rule 260:25-7-12(c)(9)).
9. Adjustments in scheduled work time may be made on an hour-for-hour basis within the defined work period.

I. Workweek Adjustment

Compensatory time at the rate of hour-by-hour may be given within the workweek it was accrued, e.g., if an employee normally works 8 a.m. to 5 p.m. Monday through Friday and has worked 40 hours by 1 p.m. Friday, they may be given time off from 1-5 p.m. on the Friday of that workweek. This is referred to as a workweek adjustment.

VII. Overtime Compensation of Exempt Employees

Any overtime work necessary to the continued effective operations of the state should be managed in the most efficient and economical manner possible. Agencies **may** provide compensatory time off to exempt employees with the following stipulations:

- The compensatory time off must be taken within 180 days following the pay period in which it was accrued.
- Compensatory time can only be given on an hour-for-hour basis, one hour off for each hour worked overtime.
- Payments shall not be made for compensatory time accrued by an exempt employee for any reason, except under the circumstances described in the paragraph below.

Agencies may also provide overtime payments for normally exempt classes based on a prevailing market condition (Merit Rule 260:25-7-3(b)). Agencies are required to make notification of such market exceptions to OMES Human Capital Management. Market exceptions may be based on the payment of overtime in similar types of exempt work in the prevailing market. An example of this is the payment of overtime to nurses in local hospitals.

VIII. Miscellaneous

A. Bona Fide Volunteers

Individuals who volunteer their services to state government and receive no compensation are excluded from the definition of employee and are thus excluded from coverage. They may be paid expenses, reasonable benefits, nominal fees or a combination of these. However, an individual shall not be considered a volunteer if the individual is otherwise employed by state government to perform similar or identical services as those for which the individual proposes to volunteer (29 CFR 553.101).

B. Multiple Job Situations

Employees of the state who are employed in fire protection, law enforcement or related activities may, at their own option, agree to a special detail to work for a separate or independent employer in such activities. The hours worked for the separate and independent employer (public or private) shall be excluded from hours worked for overtime pay purposes by the original employing agency. This provision shall apply even if the principal employer requires that only certain individuals may engage in the employment by the separate and independent employer and facilities or affects the conditions of employment.

C. Substitution

Employees of the state, at their own option but with the approval of their employer, may substitute during scheduled hours for other employees employed in the same capacity. In the case of such substitution, the hours involved are credited to the scheduled employee and not to the substitute employee. The employer need not maintain a record that the substitution has taken place (29 CFR 553.31).

D. Legislative Employee Exclusion

The amendments exclude from the definition of employee, and thus from coverage of FLSA, employees who are not subject to the civil service laws of the state and are employed by the legislative body of a state, political subdivision of the state, except that employees of legislative libraries would continue to be covered (29 CFR 553.12).

E. Elected Official Exclusion

The FLSA excludes personal staff members who are selected or appointed by elected public officials. Generally, members of personal staff include only persons who are under the direct supervision of the selecting elected official and have regular contact with such official. Personal staff members in question must not be subject to the civil service laws of the state (29 CFR 553.11).

F. Nondiscretionary Bonuses and Incentive Payments

Nondiscretionary bonuses and incentive payments, including commissions, can be used to satisfy up to 10% of the standard salary level test. To meet the standard level, a catchup payment can be made within one pay period of the end of the year.

IX. Frequently Asked Questions and Answers about the Revisions

Q. Where can I find more information about FLSA and recent changes?

- A. The United States Department of Labor has developed a helpful area on their website at [dol.gov/agencies/whd/overtime/2019/overtime_FAQ.htm](https://www.dol.gov/agencies/whd/overtime/2019/overtime_FAQ.htm) with training seminars and factsheets.

Q. Who can I contact for questions about FLSA and the recent changes?

- A. You can email OMES HCM's Classification and Compensation team at HCMClassComp@omes.ok.gov.