

HOURS OF WORK/OVERTIME POLICY AND PROCEDURE – REVISED 9/2/2018

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POLICY

It is the policy of the South Carolina Forestry Commission (the Commission) to comply with federal and South Carolina laws and regulations relating to wages. Overtime hours shall be limited to those situations where absolutely necessary to carry out job responsibilities.

PROCEDURE

FEDERAL AND STATE REQUIREMENTS

The U.S. Fair Labor Standards Act (FLSA) establishes minimum wage rates, maximum work hours, overtime pay requirements, and child labor restrictions for employees subject to its provisions. Other State and Federal laws, regulations, compacts, and policies also have provisions relating to pay practices applicable to the South Carolina Forestry Commission.

USE OF OVERTIME

The use of overtime should be an exception to the regular work schedule. An employee should only be required to work overtime on an occasional basis to meet a sudden increase in the workload, to overcome productive time lost due to some mechanical failure, or to meet the demands of a crisis situation.

When any office and/or individual is found to be consistently charging overtime, the functions of that office and/or individual should be reviewed by the appropriate management. Every attempt shall be made to avoid the repetitive and chronic use of overtime.

It shall be the responsibility of each manager to determine that the provisions of this policy are administered in the best interests of the Commission. It is important to control unauthorized overtime. Under normal circumstances, each manager is responsible for the prior approval of hours worked that will result in overtime. However, while unauthorized overtime must be compensated, unauthorized overtime may result in disciplinary actions for managers and/or employees.

EXEMPT/NONEXEMPT STATUS UNDER THE FAIR LABOR STANDARDS ACT

Employees are considered exempt if their job duties and their salary meet certain thresholds within the FLSA. These exempt employees are not subject to the FLSA minimum wage, overtime, or record keeping requirements. As such, exempt employees are expected to work as many hours

as required to perform the duties of the position. The exempt status of an employee shall be determined by the Human Resources Office. All employees who are not considered exempt from the FLSA will be considered nonexempt.

Nonexempt employees are covered by, or subject to, the minimum wage, overtime, and recordkeeping requirements of FLSA. The Commission requires nonexempt and exempt employees to maintain accurate records of all hours worked through SCEIS or by completing weekly time sheets.

MINIMUM WAGE

All nonexempt employees must be paid not less than the current minimum wage.

COMPENSATION

The regular rate of pay for purposes of calculating overtime due is an hourly rate that includes all remuneration for employment paid to an employee to include base pay, and other compensation not included in base pay as outlined in the State Human Resources Regulations. Discretionary bonuses are not considered in calculating the regular rate. Compensation of all employees is based on forty (40) hours per week or 2080 hours per year.

TEMPORARY EMPLOYEES

The hourly rate is the regular rate for temporary employees. This rate is calculated by dividing the annual salary by 2,080 hours. Temporary employees shall be compensated for all hours worked. All temporary employees must be designated as nonexempt.

WORKWEEK

The normal workweek for full-time employees of the Commission is 37.5 to 40 hours per week. Nonexempt employees, who have a scheduled workweek of 37.5 hours up to 40 hours, shall not receive additional compensation or compensatory time for hours worked between 37.5 and 40 hours per workweek. Any employee may be required to work up to forty (40) hours per workweek without additional compensation.

For record keeping purposes, the workweek begins at 12:01 AM on Saturday and ends at 12:00 midnight on Friday.

ADJUSTED WORKWEEK

Under warranted circumstances, a nonexempt employee may be allowed to work in excess of the normal workday and may be given time off during the same workweek at the rate of an hour for an hour to avoid working over 40 hours during any workweek. This adjustment is not allowed for hours worked between 37.5 and 40 hours during any workweek. This type of work rescheduling is intended to preclude working more than 40 hours in a workweek and eliminate the need for overtime payment or compensatory leave.

HOURS WORKED

Hours worked include all time that the employee is required to be on duty or at the prescribed workplace and all time during which the employee is permitted to work. The hours worked includes any bona fide work which the employee performs on or away from the premises if the supervisor knows or has reason to believe that the work is being performed. It is a violation of law and policy for anyone to direct an employee not to report all hours the employee has worked. An employee is required to report to the State Forester (Agency Director), anyone who directs him/her to inaccurately report hours worked.

Non-work time while in leave status is not considered hours worked. This time includes holidays, paid leave, compensatory time, or unpaid leave.

HOLIDAYS

An employee who is required to work on a legal holiday shall be given compensatory holiday leave credits in accordance with Section 19-708.04 of the State Human Resources Regulations. Time worked on a legal holiday shall be used in computing total hours worked. All nonexempt employees who are not allowed to take holiday compensatory time earned for working on a holiday within a 90-day period, shall be compensated for the holiday by the Commission at the straight hourly pay rate of the employee. The State Forester or designee may extend the 90-day period for an additional 90 days because of limited staffing. All nonexempt employees will be paid for unused holiday compensatory time upon separation of employment from State government, movement to a position in another State agency (whether the new position is exempt or nonexempt), or upon an employee starting in an exempt position at the Commission. Exempt employees shall not be paid for unused holiday compensatory time under any circumstances.

OVERTIME AND HOURS WORKED

Overtime is defined as all hours worked by nonexempt employees in excess of forty (40) hours in a seven (7) consecutive day work period. A nonexempt employee shall be paid no less than one and one-half (1½) times his/her regular rate of pay for all hours worked over forty (40) in a workweek or granted compensatory time at a rate of one and one-half (1½) hours for each hour of overtime worked. Nonexempt employees, who have a scheduled workweek of 37.5 hours, shall not receive additional compensation or compensatory time for hours worked between 37.5 and 40 hours per workweek.

Nonexempt employees, other than law enforcement and fire protection, may accumulate no more than 240 hours of compensatory time. Overtime worked by an employee which would result in more than of 240 hours of compensatory time, must be paid in the employee's next regular paycheck.

Law enforcement and fire protection employees may accumulate no more than 480 hours of compensatory time. Overtime worked by an employee which would result in more than 480 hours of compensatory time, must be paid in the employee's next regular paycheck.

MEAL PERIODS

A bona fide meal period of thirty (30) minutes or more which occurs during the scheduled workday is not hours worked if the employee is completely relieved from duty for the purpose of eating a meal. Normally, the meal period is one (1) hour each workday. All nonexempt employees, except Forestry Technician I and Forestry Warden positions, are expected to take a meal period.

BREAKS

Breaks of short duration must be counted as hours worked. One morning and one afternoon break of no more than fifteen (15) minutes each is permitted. The Commission is not obligated to establish breaks, as breaks are a privilege, and not a right. Breaks shall not be used to allow an employee to come in late, to leave early, or to extend the lunch period.

OVERTIME/COMPENSATORY TIME MAY NOT BE WAIVED

The requirements that overtime pay must be paid or compensatory time granted to nonexempt employees after forty (40) hours of work in a workweek cannot be waived by agreement between the supervisor and the employee.

ON CALL STATUS

On call status is not work hours. Employees in on call status must be able to return to on duty status within thirty (30) minutes or up to one (1) hour with prior approval from his/her supervisor. Work hours begin when an employee is at his/her duty station and contacts the appropriate regional dispatch center to report he/she is preparing to dispatch to a fire.

TRAVEL TIME FOR NONEXEMPT EMPLOYEES

Travel time for nonexempt employees may be hours worked under some conditions. Ordinary home-to-work travel or work-to-home travel is not working time. All time spent traveling on one-day assignments is considered time worked regardless of time of day or day of the week.

Travel away from home involving an overnight stay for nonexempt employees is considered time worked when it occurs during the employee's normal working hours. This provision is applicable not only on regular working days, but also during the corresponding hours of non-working days.

LECTURES, MEETINGS AND TRAINING FOR NONEXEMPT EMPLOYEES

When a nonexempt employee by reason of official responsibilities is required to attend lectures, meetings, training programs, etc., such time is considered work time. An employee who is required to drive an automobile or is required to ride therein as an assistant or helper is considered to be working except during meal periods.

IMPACT OF STATUS CHANGE

If a nonexempt employee accepts a position that is considered exempt either within the Commission or with a separate state agency, compensatory time must be paid prior to the employee starting in the exempt position.

If a nonexempt employee separates from employment or moves to another state agency, any accrued compensatory time must be paid prior to the separation or movement. Compensatory time must be paid at a rate of compensation not less than either the average regular rate received by the employee during the last three years of employment or the final regular rate received by the employee, whichever is higher.

DUAL EMPLOYMENT

Dual employment must be requested and approved in advance through the Human Resources Office. Dual employment that will result in overtime liability for the Commission will be approved only under extenuating circumstances. If a nonexempt employee requests dual employment that results in wages paid by the State Office of the Comptroller General, the nonexempt employee cannot work over forty (40) hours per week without prior approval.

COMPENSATORY TIME AND PAY IN EXCESS OF FORTY (40) HOURS FOR EXEMPT EMPLOYEES

Under the FLSA, employees who are in positions classified as exempt are generally excluded from and thus not eligible for compensatory time or for pay for work in excess of forty (40) hours in the workweek. This section outlines the exceptional circumstances in which exempt employees who have been designated emergency response employees and who are assigned emergency response/public safety work assignments may be authorized to accrue compensatory time for hours worked in excess of forty (40) hours.

Accrual of compensatory time in excess of forty (40) hours for exempt employees may only be authorized during situations which have been designated as qualifying emergency response/public safety assignments. The State Forester is exempt from emergency response/public safety assignment pay.

A. COMPENSATORY TIME (Exceptions to this paragraph are set out in A.1 and B. below)

Exempt employees may be eligible to accrue compensatory time for hours worked in emergency response, public safety work assignments, and/or natural disaster events, in excess of forty (40) hours in the workweek. The eligibility is determined by the immediate supervisor. If granted, it must not be at a rate greater than one (1) hour compensatory time for each hour worked in excess of forty (40) hours in the workweek and may be at a lesser rate. Exempt employees must not be paid for hours worked in excess of forty (40) hours in the workweek, but will be paid with compensatory time as it is used. The intent of this provision is not to grant exempt employees hour-for-hour compensatory time for all hours worked over forty (40) hours in a workweek.

Under no circumstances shall an exempt employee accrue more compensatory time than the FLSA allows for a nonexempt employee. Refer to the *Overtime and Hours Worked* section in this policy/procedure.

A.1. COMPENSATORY TIME EXCEPTION FOR EXEMPT EMPLOYEES

In-State - Emergency Response/Public Safety Assignments

In the event a State of Emergency is declared by the Governor, and, at the discretion of the State Forester (Agency Director) or his/her designee, exempt employees may be paid for actual hours worked in lieu of accruing compensatory time. The compensation rate for exempt employees is straight time (hour-for-hour) for hours worked over forty (40) in a workweek.

B. PAY IN EXCESS OF FORTY (40) HOURS FOR EXEMPT EMPLOYEES

Out-of-State Assignments - Emergency Response/Public Safety Assignments

The payment of emergency response/public safety assignment pay to exempt employees is discretionary, and payment for one emergency response operation does not create a precedent for future operations. Pay in excess of forty (40) hours for emergency response/public safety assignments to exempt employees shall not affect their exempt status.

Exempt employees participating in emergency response/public safety assignments may receive pay for hours worked in excess of forty (40) hours in a seven (7) consecutive day workweek period. The out-of-state emergency response assignment determines the rate of pay for exempt employees as described below:

Southeastern States Forest Fire Compact

Exempt employees assigned compact orders are guaranteed a minimum of eight (8) hours of work time per day, plus pay at the rate of one and one-half (1½) hours for each hour worked over forty (40) in a workweek.

Master Cooperative Wildland Fire Management and Stafford Act Response Agreement

When exempt employees are dispatched to an incident under this agreement and elect reimbursement for time and expenses, employees are paid at the rate of one and one-half (1½) hours for each hour worked over forty (40) in a workweek.

SCHEDULING COMPENSATORY TIME

In the event nonexempt or exempt employees earn compensatory time, supervisors will work with employees to schedule the time off as soon as possible. Compensatory time should be taken by the end of each fiscal year. If an employee cannot exhaust his/her compensatory hours by the end of the fiscal year, the supervisor should submit a planned work schedule for the employee to exhaust the compensatory hours within the subsequent six months. Any exception to the planned work schedule must be in writing and approved by the Agency Director or his/her designee.