

UTAH DEPARTMENT OF HEALTH AND HUMAN SERVICES POLICY AND PROCEDURES		
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OVERTIME AND EXCESS HOURS		
<p>RATIONALE: The federal Fair Labor Standards Act (FLSA) establishes standards for employee working conditions and compensations, including compensation for overtime hours (See 21 U.S.C. §201 <i>et seq.</i>) Compliance with the FLSA is crucial for employee work life quality because non-compliance can result in triple damages for the department and in disciplinary action for managers, supervisors or other employees who violate the FLSA. The purpose of this policy is to alert the employees of the Department of Health and Human Services about the state and federal laws that govern overtime and excess hours, to establish procedures that comply with those laws, and ensure the department uses overtime and excess hours efficiently, economically, and within existing budgets.</p> <p><i>Related Policies, Applicable Standards, Statutes: Utah Code Section 67-19-6.7 and Division of Human Resources Rule R477-8, R477-1, U.S.C. §201 et seq., 29 U.S.C. §213 .</i></p>		
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I. DESCRIPTION

This policy guides the department in complying with the FLSA, establishes procedures, and sets disciplinary standards for non-compliance. This policy supersedes any previous policy governing this subject matter.

II. DEFINITIONS

The following terms are defined for this policy as:

- A. **Department management:** The designated officer (such as a supervisor, manager or other official) who has the responsibility and authority to approve overtime and excess hours.
- B. **Compensable hours:** The time for which an employee is entitled to compensation. Compensable hours include any combination of the following: actual hours worked, accrued or administrative leave time, compensatory time, excess hours, and holidays. (Compare "Compensatory Time," II.C.) An employee shall record work in

increments of 15 minutes to receive pay for hours worked and overtime hours worked.

- C. **Compensatory time (comp time):** Time off that is provided to an employee in lieu of monetary overtime compensation. (See DHRM Rule R477-1-1(29)).
- D. **DHHS or department:** The Utah Department of Health and Human Services and any operational unit within.
- E. **Excess hours:** A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period (DHRM Rule R477-1-1(45)).
- F. **FLSA:** Fair Labor Standards Act, the federal statute that governs overtime. (See 29 U.S.C. §201 *et seq.*)
- G. **FLSA exempt employee:** An employee who is exempt from the overtime and minimum wage provisions of the federal Fair Labor Standards Act. (See 29 U.S.C. §213 of the FLSA.)
- H. **FLSA non-exempt employee:** An employee who is not exempt from the overtime and minimum wage provisions of the federal Fair Labor Standards Act. (See 29 U.S.C. §213 of the FLSA).
- I. **OU:** Operational units within DHHS, including divisions, offices or standalone operations whose director reports to the executive director, a deputy director, an assistant deputy director, or a division director.
- J. **Overtime:** Actual time worked in excess of the employee's defined work period.
- K. **Overtime year:** The year at the end of which an FLSA exempt employee's accrued but unused compensatory time shall lapse (Utah Code Ann. §67-19-6.7). The date of the overtime year is determined by the department in compliance with state statute and rules.
- L. **Work period:** The maximum number of hours an employee may work prior to accruing overtime or compensatory hours.(See DHRM Rule R477-1-1(116)). For FLSA non-exempt employees, the work period is a 40-hour workweek within a consecutive seven-day period. For FLSA exempt employees, the work period is a consecutive 14-day, 80-hour pay period. For all employees, the work period starts on Saturday and ends on Friday.

III. POLICY

- A. Overtime and compensation time: eligibility, usage and payout
 - 1. FLSA non-exempt employees are eligible for overtime compensation when they work more than 40 hours in a work period. Leave, on-call time, and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual.

- A) FLSA non-exempt employees who elect compensatory time as their compensation on the "Overtime Compensation Election/Agreement" may earn a maximum balance of 80 hours of compensatory time. Hours in excess of the 80-hour limit shall be compensated with a monetary payment at the rate of one-and-a-half times the employee's regular hourly rate. This monetary payment shall be made on the regular payday for the work period in which the overtime was earned.
- FLSA non-exempt employees who elect compensatory time as their compensation on the "Overtime Compensation Election/Agreement" are not eligible to receive monetary payment for their overtime or excess hours unless:
- 1) The monetary payment is authorized by the director of the OU for which the employee works; and
 - 2) The director first consults with the Division of Human Resource Management (DHRM) field office about the proposed payment, and the DHRM field office determines that the proposed monetary payment is appropriate based on considerations such as consistency, equity and compliance with state and federal laws, including this policy.
2. FLSA exempt employees shall be eligible for compensatory time at the rate of one hour off for each hour they work beyond the standard 80-hours in a work period. For the purpose of calculating overtime, leave, on-call time, and holiday time used within the work period shall not count as hours worked.
- A) Compensatory time earned by FLSA exempt employees is not an entitlement, a vested right, or a benefit.
 - B) Any compensatory time earned but not used by FLSA exempt employees shall lapse at the end of the department's overtime year - the end of payroll period 10; changes FLSA status to nonexempt or when the employee transfers to another department, terminates, retires, or otherwise does not return to work by the end of the overtime year.
 - C) FLSA exempt employees shall receive monetary payment only for earned compensatory hours that exceed 80 hours of earned compensatory time. Compensatory time earned beyond a base of 80 hours shall be paid down to 80 in the work period in which it was earned.
 - i) Division Directors, Department Assistant Deputy Directors, and Department Deputy Directors will receive monetary payment only for compensatory hours that exceed 240 hours of earned compensatory time. Compensatory time earned

beyond a base of 240 hours shall be paid down to 240 in the work period in which it was earned.

- D) Notwithstanding any other provision to the contrary, overtime hours worked by the department's executive, deputy and OU directors shall not be compensated with monetary payment, regardless of the amount of the director's accrued compensatory hours.
- E) It is the responsibility of the employee to work with OU management to arrange for an employee's use of compensatory time as soon as possible, without unduly disrupting department operations or endangering public health, safety or property.

B. Excess hours: eligibility, usage and payout

- 1. Excess hours accrue at straight time only when the hours worked by an employee, plus any holiday hours for which the employee was paid but for which the employee did not work, exceed the number of hours in the employee's normal work period. Department management shall deny the use of any leave time (other than holiday and jury leave) that results in an employee accruing excess hours.
 - A) FLSA non-exempt employees' excess hours shall accrue over a 40-hour work week.
 - B) FLSA exempt employees' excess hours shall accrue over an 80-hour pay period.
- 2. Employees may use their excess hours the same way they use their annual leave.
 - A) An employee may not accumulate more than 80 excess hours.
 - B) Excess hours accrued beyond 80 hours shall be paid out on an hour-for-hour basis in the work period for which they were accrued.

C. Management's authority to reduce overtime and excess hours

- 1. In order to reduce overtime or excess hours, agency management may;
 - A) Direct an FLSA non-exempt employee to cease work after the employee has earned a total of 40 compensable hours during the work period.
 - B) Direct an FLSA exempt employee to cease work after the employee has earned a total of 80 compensable hours during the work period.
 - C) Approve the use of alternative work schedules to accommodate late meetings, relieve traffic congestion and ensure the public's access to agency services.

IV. PROCEDURE

A. Overtime compensation/agreement form

- 1. All FLSA non-exempt employees shall complete and sign an overtime compensation election/agreement form. This designation notifies agency

management which of the following types of overtime compensation the employee elects to receive:

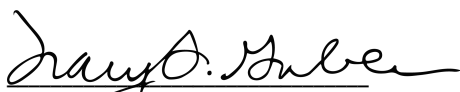
- A) Monetary payment, at the rate of one and a half times the employee's regular hourly rate during the pay period it was earned; or
 - B) Compensatory time off is at a rate of time and one-half to be used as time off at a later date.
- 2. FLSA non-exempt employees who want to change their overtime election may do so by contacting the Employee Resource Information Center (ERIC).
- B. The overtime compensation/agreement form shall not be used with FLSA exempt employees.
- C. Approval of overtime and excess hours
 - 1. Department management shall not direct any employee to work any hours for the state without compensation;
 - 2. Department management shall not direct any employee to work or conduct state business while the employee is on leave;
 - 3. Before working any overtime or excess hours, an employee shall first obtain approval from agency management, unless:
 - A) The overtime or excess hours are clearly necessitated by an emergency situation or a situation that affects significant interests of the department or its clients;
 - B) Obtaining prior approval from department management is impossible or infeasible; and
 - C) Department management has not previously advised the employee that overtime or excess time are not allowed in such situations.
 - 4. If an employee works overtime or excess hours without prior approval, department management shall review the situation and determine whether the employee's failure to obtain prior approval was justified under this policy.
 - 5. Department management shall not pre-approve any overtime or excess hours unless:
 - A) Department management determines that having the employee work those hours is efficient and economical; and
 - B) The overtime and/or excess hours are funded within the department's budget.
 - 6. Unless otherwise authorized by this policy, FLSA non-exempt employees shall not exceed 40 compensable hours during a work period, and FLSA exempt employees shall not exceed 80 compensable hours during a work period:
 - A) If department management authorizes an FLSA non-exempt employee to work more than 40 hours during one week of a pay period and then less than 40 hours during another week of the same pay period, the arrangement shall violate the FLSA unless the

employee receives overtime compensation for hours worked in excess of 40 hours in one week's time.

7. Employees who work overtime or excess hours in violation of this policy shall be compensated for the time worked, but they may be disciplined by OU management.
 8. Members of the department management who knowingly violate the provisions of this policy or other state and federal laws about overtime and excess hours may be subject to discipline.
- D. Completion and approval of timesheets
1. All department employees, whether FLSA exempt or non-exempt, shall complete a state-approved, bi-weekly electronic or paper timesheet to document all compensable hours (e.g., hours worked, leave and compensatory time used, holidays, and on-call time earned) for each day of the work period. Employees shall record all compensable hours on their timesheet corresponding to the day the hours were worked or leave hours taken.
 2. Employees shall accurately complete their timesheets (paper or electronically) within the required time frames; it is a violation of federal and state law for an employee to work but not record time worked.
 3. OU management shall deny the use of any leave time, other than holiday leave, that results in the accrual of overtime and excess hours.
 4. OU management shall determine the appropriate level of approval.

V. EXCEPTIONS

- A. Exceptions to this policy shall be approved by the DHHS executive director. If DHRM rule exceptions are needed, the executive director shall send the request to the DHRM division director.
- B. OU directors may approve overtime or excess hours if they deem it necessary in an emergency situation or a situation that affects significant interests of the department or its clients.



Tracy S. Gruber

Utah Department of Health and Human Services Executive Director

September 12, 2022

Date