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**1. Purpose**

The following guidelines were developed to ensure compliance with the *Fair Labor Standards Act* (FLSA) for staff employees at Virginia Tech.

**2. Policy**

Virginia Tech is a public institution of Commonwealth of Virginia, and as such is a public employer committed to serving the public interest and accountable to the tax payers for the effective and efficient use of public funds. It is the policy of Virginia Tech that employees are not paid for time that they do not work, unless they have earned pay for time not worked under pertinent policies (such as personal or sick leave). Therefore, an employee's pay will be reduced, or an employee will be placed on leave-without-pay, if absent from work for personal reasons or because of illness or injury and leave balances are not used because (1) there is no request for accrued leave or a request has been denied, (2) leave balances have been exhausted, or (3) a request for leave-without-pay has been approved.

All employees of the university are covered by the FLSA, although some individuals may be exempt from its provisions. Full-time employees are paid a salary based on 40 hours of work per work week.

## 2.1 Non-Exempt Positions

Non-exempt employees working additional wage employment at the university must be compensated under the overtime provisions. Overtime is paid or overtime leave is granted to all non-exempt salaried employees who work more than forty hours in the work week in one position or as a result of combining all positions. All hourly wage employees are considered *non-exempt*.

The Fair Labor Standards Act requires that employees in non-exempt positions be compensated at time-and-one-half rate for all hours worked over 40 in the work week. Time-and-one-half overtime may be compensated with overtime leave or time-and-one-half pay.

## 2.2 Exempt Positions

An exempt employee is one who is exempt from the minimum wage and overtime requirements of the *Fair Labor Standards Act (FLSA)*.

Exempt employees must meet both the salary basis test and the job duties test described below.

## 2.3 Exemption Tests

The following information gives a brief and general overview of the types of exemptions and the criteria that must be met.

**1) Salary Basis Test** - To qualify for exemption, employees generally must be paid at least \$455 per week on a salary basis. Salary basis means the employee regularly receives a predetermined amount of compensation on a regular basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. With only a few exceptions, 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.

The university's "wage/adjunct" faculty paid by P14 are considered "salaried" for the purposes of FLSA compliance because they are paid a pre-determined amount each pay period. Unless they are engaged in teaching, they must be paid a minimum of \$455 per week to qualify as exempt. Additional record-keeping will be required for any non-teaching faculty member paid on a P14 at a rate less than \$455 a week. See section 2.5.1 for these additional requirements.

The salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine.

**2) Job Duties Test** – To qualify for an exemption, employees must meet the above salary basis test and qualify under one of the following tests:

### Executive

- Primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; AND
- Customarily and regularly directs the work of two or more other employees (2 FTE); AND
- Has authority to hire or fire other employees or must have significant ability to influence these decisions.

### Administrative

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers, AND

- primary duty includes the exercise of discretion and independent judgment with respect to matters of significance;
- OR primary duty is related to academic instruction or training.
- Certain jobs in careers such as Finance, Auditing, Human Resources, Accounting, Public Relations, Database Administration, Procurement, and Budgeting may qualify as exempt.
- Certain jobs applying well established techniques, procedures, or standards described in manuals or other sources may not qualify as exempt.
- Those performing clerical, secretarial, mechanical, recurrent or routine work would not qualify as exempt.

#### Professional

- Primary duty must be the performance of work requiring advanced knowledge in a field of science or learning; AND
- Customarily acquired by a prolonged course of specialized intellectual instruction;
- OR primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field or artistic or creative endeavor.
- Occupations that may qualify as exempt are in the fields of law, theology, medicine, accounting, teaching, architecture, engineering, physical sciences, chemical sciences, and biological sciences.
- Types of jobs that may not qualify as exempt are Licensed Practical Nurses (LPN), accounting clerks and bookkeepers who process routine work, paralegals, engineering technicians, and cooks/chefs who perform routine work.

#### Computer

- The individual must be employed as a computer systems analyst, computer programmer, software engineer, or in a similar position.
- Computer systems analysts, computer programmers, and software engineers are considered exempt
- Positions such as computer support specialists, help desk employees, computer network specialists, and database administrators do not qualify as exempt under the computer exemption; however, some of these positions may qualify under other exemptions.

The above section describes only general guidelines. Further information and assistance in interpretation of the FLSA can be obtained from Human Resources at 231-9331.

## 2.4 Minimum Wage Provisions

The *Fair Labor Standards Act* requires compensation at least at the current minimum wage rate for exempt and non-exempt employees.

## 2.5 Volunteers

The *Fair Labor Standards Act* states that non-exempt employees must be compensated for all hours they are required or permitted to work. Thus, even though employees *volunteer* to work beyond their normally scheduled hours, the department must compensate employees for those hours worked. An individual is considered to be a volunteer only if the following conditions are met:

1. Services are performed for which no compensation is received beyond expenses or a nominal fee; AND
2. Services rendered are not the same type services that the individual is employed to perform for the university.

**Example:** A custodial employee may volunteer to work a fund raising event for the University. The individual is not considered an employee while volunteering.

## 2.6 Lectures, Seminars, Training Courses and Classes

The **voluntary** attendance of a non-exempt employee at lectures, training courses, seminars or classes that are not directly related to the employee's job and **outside the normal scheduled work hours** is not considered as work hours if the employee performs no productive work while in attendance. This is true even if the University compensates the employee for the cost of the course.

Attendance is not voluntary if management requires it or if the employee is led to believe that his or her present working conditions or continued employment would be adversely affected by not attending. Such attendance is considered hours worked.

The **voluntary** attendance of a non-exempt employee at lectures, training courses, seminars, or classes during the **normal scheduled work hours** must be counted as hours worked. If the supervisor approves this time away from work, it must be tracked as hours worked, leave, or some other form of hours paid. However, for-credit courses taken under the university's tuition waiver program are not counted as hours worked.

**Example:** Voluntary attendance in courses offered by the university's Leadership Development department would normally be counted as hours worked for those hours falling within the employee's regularly scheduled work hours. The time spent traveling to the course location that occurs outside the employee's normal work schedule does not apply to hours worked.

## 2.7 Meal Breaks

*Policy 4300, Hours of Work* (<http://www.policies.vt.edu/4300.pdf> ), requires a 30-minute meal break for employees working six consecutive hours or more. Employees who work through their meal period must be compensated.

Meal period time cannot be excluded for an employee who stays at her or his workstation and occasionally answers the phone during the meal break or who, without approval of the supervisor, takes it upon himself or herself to work through the meal break. Employees who work without approval may be subject to disciplinary action but must still be compensated for time worked.

## 2.8 Lactation Accommodations

A 2010 amendment to the Fair Labor Standards Act requires employers with over 50 employees to provide non-exempt workers with "reasonable break time ... to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Typically, 15 to 20 minutes every three to four hours are required. VT Policy 4300 (<http://www.policies.vt.edu/4300.pdf>) allows managers to grant non-exempt employees working an 8-hour day morning and afternoon breaks, not exceeding 15 minutes each, which are included with the total required hours of work. These breaks are to be paid. To accommodate mothers who require more than 15 minutes, managers may permit them to extend these breaks by up to 15 minutes each by taking unpaid time from the lunch break or by extending the work day by the amount required. Managerial approval is required for extended breaks.

Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk". Human Resources provides information about the locations of lactation facilities and guidance regarding options for situations in which a lactation facility is not accessible at <http://www.hokiewellness.hr.vt.edu/worklife/lactation/>. Code of Virginia 2.2-1147.1 states that a woman may breast-feed her child at any location where that woman would otherwise be allowed on property that is owned, leased or controlled by the Commonwealth.

Exempt employees wishing to express milk should be accommodated in a similar manner, including access to an appropriate space if they don't have a private office.

Questions regarding these requirements and requests for assistance or guidance should be directed to the Virginia Tech Work/Life Office in Human Resources.

### **3. Procedures**

#### **3.1 How to Determine Overtime Hours or What Constitutes Hours Worked**

The *Fair Labor Standards Act* states that non-exempt employees must be compensated for overtime at a rate of time and one half for all hours worked over 40 in a period of seven consecutive days (work week). The seven day work period for the university is normally Friday at midnight to the following Friday at midnight. In calculating the total hours an employee works, hours used for leave of any kind including holidays are not included.

Work periods of more than seven days are available for law enforcement and fire protection employees.

##### **3.1.1 Exempt Employees**

Additional pay, or overtime leave, for any exempt employee may be given only if approved by the appropriate Dean or Vice President, and pre-authorized by Human Resources for occasional, special circumstances or projects which require hours to be worked beyond the employee's normal schedule. Overtime compensation for exempt positions should not be given on a continuing basis.

#### **3.2 Non-Exempt Employees**

##### **3.2.1 Approval for Overtime Compensation**

Overtime should be authorized only by the supervisor and primarily for exceptional requirements of an emergency or temporary nature. Employees who take it upon themselves to work overtime without prior approval from the supervisor may be subject to disciplinary action. This includes working through the meal break or after the normal work schedule. Departments should prohibit the continual use of overtime.

In order to avoid the need for overtime pay or overtime leave, management may reschedule employees during the same work week so that no more than the 40 hours are worked.

##### **3.2.2 Overtime Leave**

Overtime leave is earned at a rate of one-and-one-half overtime leave hours for each hour actually worked over 40 in the work week.

1. Overtime leave may be carried over from one year to the next. When an employee separates from a classified position or transfers to another agency, overtime leave balances must be paid at the current hourly rate or the average rate over the last three continuous years of employment, whichever is higher (State Policy 3.15).
2. Overtime leave may be accumulated up to a maximum of 240 hours (480 hours for non-exempt public safety, emergency and seasonal positions). Once the maximum level is reached, additional hours worked over 240 must be compensated with time-and-one-half pay.
3. Departments electing to compensate employees with overtime leave instead of time-and-one-half pay must notify each affected employee prior to working overtime.
4. Management should establish and maintain written documentation on the departmental policy of either paying overtime or granting time-and-one-half off.

5. Employees who wish to take overtime leave must be permitted to do so within a reasonable period after making such a request if the requested leave does not unduly disrupt the department.

### 3.2.3 Compensatory Leave

Overtime leave and compensatory leave are not interchangeable and different rules apply.

Compensatory leave is normally granted for holidays and for hours worked during an authorized closing; the leave must be used within a year's time.

### 3.2.4 Straight-Time Pay for Additional Hours Worked

Straight-time pay or overtime leave must be given to non-exempt employees for time worked beyond the required hours in a work week **where no more than 40 hours are worked**. This may happen when a state holiday or inclement weather day has occurred or when the employee has taken paid leave.

### 3.2.5 Travel Time

The hours a non-exempt employee spends traveling to a destination as part of the job for the university (except for normal home-to-work travel time) must be counted as hours worked **and is determined by management**.

- **All-In-One-Day Travel:** In the case of a non-exempt employee riding in an automobile or using mass transit, and traveling directly from and returning home on an all-day trip, all of the hours must be counted as work hours except travel time to and from the point of departure (i.e., train station or airport). Travel between the home and place of departure is regarded in a similar way to travel time between home and the normal office location and is not work time.
- **Overnight Travel:** When a non-exempt employee is traveling on an overnight trip all of the hours occurring within the normal daily scheduled hours must be counted as work hours even if the travel takes place on days when the employee is not normally scheduled to work. Time spent as a passenger during overnight travel outside of normal scheduled work hours where no work is performed does not count as hours worked.

A non-exempt employee who is required to drive is compensated for all travel hours.

**Example:** An employee normally works 8:00 a.m. - 5:00 p.m., Monday through Friday. Any travel hours between 8:00 a.m. and 5:00 p.m., even on Saturday and Sunday, are counted as hours worked.

### 3.2.6 On-Call Time

On-call time is not counted as hours worked when the employee is considered *unrestricted*, which means they are free to spend their time as they wish. An employee who is required to leave work where he or she can be reached or who carries a beeper is considered *unrestricted*.

If the non-exempt employee is required to be in a specific location waiting for an assignment, then they are considered to be "engaged to wait" and must be paid for the on-call time.

### 3.2.7 Joint Employment

Joint employment exists when:

1. An employee occupies two wage positions or a salaried and a wage position within the university, and

2. At least one of the positions is non-exempt.
  - a. If the primary position is exempt, and the secondary position is non-exempt, then the hours over 40 will not be paid at time and one half.
  - b. If the primary position is non-exempt, hours worked are cumulative, and overtime must be paid after 40 hours are worked in a work week in one or a combination of positions.
  - c. If the two positions are paid at different rates, a weighted average must be used as the regular rate for determining overtime compensation due.

Joint employment does not exist when the employee independently seeks employment with another state agency or non-university employer.

### 3.2.8 Occasional and Sporadic Work

Section 7(p)(2) of the FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for purposes of determining overtime liability under the FLSA.

This document summarizes the U.S. Department of Labor interpretations related to the application of the above language. The hours worked on separate appointments need NOT be combined for purposes of determining overtime liability, only when ALL of the following requirements are met:

1. Work is accepted SOLELY at the employee's option.
  - o The decision must be made freely by the employee, and the employee must be free to refuse to perform such work.
  - o There may not be any sanctions against the employee for refusing to perform, nor any requirement to justify or explain the refusal.
2. Work is occasional or sporadic and performed on a part-time basis.
  - o Assignments must be infrequent, irregular, or occurring in scattered instances (e.g., assignments may not be every week or every other week).
  - o Assignments may be anticipated, scheduled and re-occurring when they occur seasonally.
3. Work is in a different capacity from the regular employment.
  - o "Different capacity" means in a different occupational category using the definitions in the Dictionary of Occupational Titles. Some occupations are much broader than others (i.e., clerical occupational titles are much broader than professional occupational titles).
  - o Exception: Public safety employees taking on any kind of security or safety function are NEVER considered to be employed in a different capacity.

**Example:** Voluntary attendance in courses offered by the university's Leadership Development department would normally be counted as hours worked for those hours falling within the employee's regularly scheduled work hours. The time spent traveling to the course location that occurs outside the employee's normal work schedule does not apply to hours worked.

### 3.2.9 Record Keeping

Each department must keep a record of hours worked, docked time and leave taken for each work period for non-exempt employees. Time records are accounting records and must be retained by the university for four years.

- **Salaried Employees (Non-Exempt):** All non-exempt salaried employees must complete and sign the [Leave and Hours Worked Report for Non-Exempt Employees P128](#). Time records for non-exempt employees should reflect the hours worked each day; they should be signed weekly by the employee and by the supervisor. If a department wishes to use an alternate record or process, it must be approved by Human Resources.

Any non-teaching wage/adjunct faculty paid on P14, earning less than \$455 per week, is considered non-exempt based on the FLSA salary test. The hours worked in a week must be recorded to ensure that the employee's actual hourly rate does not fall below Federal minimum wage. If the employee works more than 40 hours in a week, time and a half must be paid for the hours in excess of 40. These hours should be tracked on the P128 Leave and Hours Worked Report, but should *not* be entered into Banner.

- **Wage Employees:** Hourly wage employees (student, non-student, and emergency hire) must complete the [Wage Employee Time Record P130](#) (designee may record hours on behalf of employee). The employee should verify the hours are correct each work week by signing and dating after the last entry of hours is recorded and the total number of hours for the work week is calculated. At the completion of the pay period the [Wage Employee Time Record P130](#) should be submitted to the supervisor for approval. The supervisor's signature and date serves as verification of the number of hours worked and the approval to pay the employee.

## 3.3 Deductions

### 3.3.1 Circumstances in Which the Employer May Make Deductions from Pay

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,
- OR for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions (see Standard of Conduct on penalties for workplace conduct rule infraction).

An employer is not required to pay the full week's salary:

- in the initial or terminal week of employment,
- for penalties imposed in good faith for infractions of safety rules of major significance,
- OR for weeks in which an exempt employee takes unpaid leave such as the Family and Medical Leave Act. In these circumstances, either partial day or full day deductions may be made.

It is the university policy to comply with the salary basis requirements of the FLSA and, therefore, managers may not make any improper deductions from the salaries of exempt employees.

### 3.3.2 What To Do If An Improper Deduction Occurs

If an employee believes that an improper deduction has been made to their salary, they should immediately report this information to their direct supervisor, or to Human Resources.

Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, the employee will be promptly reimbursed for any improper deduction made.



## 4. Definitions

**Compensatory Leave:** Leave earned due to special circumstances where an employee worked (on a holiday) as an essential employee in an authorized closing.

**Exempt Employee:** An employee who has been determined exempt from the overtime requirements of FLSA.

**FLSA:** Fair Labor Standards Act

**Full-time Staff Employee:** A full-time salaried employee who is covered under the rules and regulations of the Virginia State Personnel Act.

**Non-exempt:** A position that is required to be compensated at time and one-half for all hours worked exceeding 40 in a work week.

**Overtime:** Payment made for hours of overtime worked.

**Overtime Leave:** Leave paid in lieu of overtime payments.

**Primary Duty:** The principal, main, major or most important duty that the employee performs on which an employee spends more than 50 percent of time or, in some circumstances, the duty that is relatively more important than others.

**Straight Time:** Hour-for-hour compensation for time worked beyond the required hours in a work week in which no more than 40 hours are worked.

**Workday:** Normally an eight-hour workday.

**Work week:** The work week for Virginia Tech is defined as Friday from midnight to the following Friday at midnight.

## 5. References

Policy 4300, Hours of Work (<http://www.policies.vt.edu/4300.pdf> )

Policy 4305, Policy on Authorized Closings (<http://www.policies.vt.edu/4305.pdf> )

Policy 4315, Guidelines on Holidays (<http://www.policies.vt.edu/4315.pdf> )

Policy 4010, Human Resources Policies Governing University Staff (<http://www.policies.vt.edu/4010.pdf> )

Fair Labor Standards Act

## 6. Approval and Revisions

- Revision 0

Approved November 20, 1995, by Associate Vice President for Personnel and Administrative Services, Ann Spencer.

- Revision 1

Changed work week from starting at 5 p.m. Friday to midnight Friday.

Approved January 20, 1997, by Associate Vice President for Personnel and Administrative Services, Ann Spencer.

- Revision 2

Extensive review and rewrite took place to clarify overtime issues throughout the policy.

Section 2.5 Record Keeping; Time records may be signed weekly by the employee and supervisor. Time records retention schedule by the university has been changed from three to four years.

Section 3.3 Exempt/Non-Exempt Status of Classified Titles under the Fair Labor Standards Act. This section was deleted since the exempt or non-exempt determination is based on the individual duties of a position, not the classification.

Section 3.4 Overtime Leave. Deleted sentence stating that a copy of the departmental policy on pay versus time off to compensate an employee for overtime be signed by each affected employee and maintained in the departmental employee files.

Deleted the Section on Virginia Child Labor Laws. This will become a separate set of guidelines.

Approved June 22, 1999, by Director of Personnel Services, Linda Woodard.

October 10, 2001: Technical corrections to update policy links and name change for the Commonwealth of Virginia's Department of Human Resource Management (formerly Department of Personnel and Training).

- Revision 3

Section 2.3: Revision due to updated FLSA regulation requirements effective August 23, 2004.

Section 2.5: Recordkeeping moved under Section 3 - Procedures

Section 4.0: Addition of policy and complaint procedures for improper deductions.

Language edits to clarify provisions.

Sections 1 & 5: Changed "Classified Employee" to "Staff Employee" to capture potential change to employees being either classified or university staff.

Section 5, definition #6 Overtime: Changed the definition to more accurately capture meaning of word "Overtime."

Technical corrections made to address changes in the Fair Labor Standards Act, including increase in the salary amount to \$455 per week, and changes in the Exemption Tests in Section 2.2.

Approved March 10, 2006 by the Vice President for Business Affairs, Kurt. J. Krause.

June 8, 2007: Technical correction to Section 3.2.12 Record Keeping.

Annual review June 1, 2010 by Vice President for Administrative Services, Sherwood G. Wilson. No revisions.

- Revision 4

Added Section 2.8 to address 2010 amendments to the Fair Labor Standards Act regarding accommodations for lactation.

Approved January 24, 2011 by Vice President for Administrative Services, Sherwood G. Wilson.

- Revision 5

Revised section 2.7 to increase the meal break period from 20 minutes to 30 minutes to be consistent with the state Hours of Work Policy, and replaced “lunch break” with “meal break” throughout the policy.

Approved August 31, 2011 by Vice President for Administrative Services, Sherwood G. Wilson