

## **26.000      COMPENSATORY TIME AND RECORD KEEPING - FAIR LABOR STANDARDS ACT**

The Fair Labor Standards Act (FLSA), as amended, covers all positions held by employees of the Trial Court, including employees in positions covered by a collective bargaining agreement.

The FLSA contains minimum wage, overtime pay and record keeping requirements applicable to employees of the Trial Court, except certain employees in positions excluded from the FLSA as provided therein.

### **26.100      Covered Employees and Exemptions**

All employees of The Trial Court are covered by the FLSA unless specifically excluded therein. The FLSA recognizes two basic categories:

Nonexempt Employees - these are employees in positions subject to the minimum wage and overtime provisions of the FLSA

Exempt Employees - these are employees in positions which are not subject to the minimum wage and overtime provisions of the FLSA

The exempt category consists of subordinate categories of positions whereby the nature of jobs meet the criteria as defined within the FLSA. The four categories applicable within the Trial Court are:

1. elected officials
2. executive employees
3. administrative employees
4. professional employees

Section 26.800 below provides a list of positions classified as “exempt” by type of exemption (elected official, executive, administrative or professional). These positions (exempt) are excluded from the overtime provisions of the FLSA. The determination of a position as “exempt” or “nonexempt” is made by the Human Resources Department.

### **26.200      Overtime**

The following provisions under the FLSA apply to overtime worked after April 15, 1986. See Section 26.600 below regarding overtime worked and compensatory time earned and accrued prior to April 15, 1986.

Nonexempt employees who actually work overtime hours in a workweek will receive compensatory time off as follows:

- a. at the “straight” time rate (hour-for-hour) for hours actually worked or paid (including paid leaves of absence) in excess of 37½ hours in a workweek but not more than 40 hours in a workweek;
- b. at the rate of “time and one half” (1½ hours for 1 hour) for hours actually worked or paid (including paid leaves of absence) in excess of 40 hours in a workweek.

Overtime hours are all hours actually worked in excess of the number of hours in an employee’s regularly scheduled workweek as established by the department head. An employee shall not work overtime unless such overtime is authorized by the department head prior to the overtime being worked. Employee time which is free from duty during such periods of time for lunch, travel to and from work, paid and unpaid leaves of absence and other periods when the employee is free from duty are not considered as hours worked. An authorized rest period (coffee break) shall count as hours worked. Such rest periods shall not be used to affect other time which counts as hours worked.

An employee must have the approval of the department head prior to compensatory time off being taken. An employee will request of his/her department head time off for earned, accumulated compensatory time. An employee will be permitted to use such time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt operations of the court or Administrative Office. If the time off as requested by the employee cannot be approved by the department head, or if the employee does not request time off, the department head will designate the dates when such time is to be taken off by the employee. The department head shall see that an employee takes compensatory time off as follows:

- a. within 12 months of when compensatory time is earned; or
- b. prior to an employee accumulating 60 hours of compensatory time, whichever occurs first (unless an additional amount is authorized by a collective bargaining agreement).

The FLSA sets specific limits on the number of hours of compensatory time that an employee can accumulate for overtime hours worked after April 15, 1986. To ensure compliance with the FLSA, each department head is responsible for ensuring that employees take accrued compensatory time off on a timely basis as above, and that no employee accumulates more than 75 hours of compensatory time for overtime hours worked after April 15, 1986 (unless an additional amount is authorized by a collective bargaining agreement).

The department head is also responsible to see that overtime is distributed

as equitably as practicable consistent with the work to be done within a particular court/department. However, in no event will the department head authorize overtime work for an employee who has accumulated 75 hours of compensatory time as a result of overtime worked after April 15, 1986 (unless an additional amount is authorized by a collective bargaining agreement).

Compensatory time off may be used in 2-hour increments at the beginning or end of the work day with the approval of the Department Head or may be taken in 4-hour increments.

## **26.300 Computation of Overtime Pay**

The department head shall not authorize an employee to receive pay in lieu of compensatory time off unless:

1. Such overtime is authorized in writing by the Court Administrator or designee prior to the overtime being worked. To obtain such authorization, the department head will submit a timely written request to the Court Administrator or designee which will include the employee's name, reason overtime is required, dates overtime is to be worked, dollar cost of overtime and the funded budget account number to be charged. Overtime pay in lieu of compensatory time off shall not be authorized unless funds have been appropriated in the department's budget and are available for expenditure.
2. When an employee's employment with the Trial Court is terminated, accrued, unused compensatory time will be paid at a rate of compensation of not less than:
  - a. the average regular rate received by such employee during the last three years of the employee's employment; or
  - b. the final regular rate received by such employee, whichever is higher.

When overtime work is to be paid for, it is necessary to reduce an employee's salary to an hourly rate of pay. The FLSA specifies that certain other remuneration paid to an employee be (1) included, (2) excluded in determining an employee's regular hour rate. Shift differential must be included in determining an employee's regular hourly rate. Payments that are excluded from determining an employee's regular hourly rate are:

- a. payments to an employee for travel expenses for official business of the Court including mileage, toll and parking costs and meals;

- b. payments to an employee for certain idle hours, when an employee is not at work, including vacation, holidays, sick leave, jury duty, bereavement leave, personal leave, compensatory time off and workers' compensation;
- c. contributions irrevocably made by the Employer to "benefit" plans, including retirement, life, accident or health insurance or similar benefits to an employee.

## **26.400 Record keeping**

The FLSA requires that certain records be made and preserved by management for "exempt" and "nonexempt" employees for specified minimum periods of time. Such records pertain to wages, hours and employment practices. The department head is responsible for the maintenance of these records. Records required for exempt employees differ from those for nonexempt employees.

The following identifies:

- a. The information/records to be made and preserved on employees.
- b. The manager or office with the primary responsibility for the making and preservation of required information/records.

I. The following information is required to be kept on nonexempt employees:

<u>REQUIRED INFORMATION/RECORD</u>	<u>PRIMARY RESPONSIBILITY FOR INFORMATION/RECORD AND FORM</u>
1. Name of employee in full.	Department Head *Employee Profile
2. Home address, including zip code.	Department Head *Employee Profile
3. Date of birth, if under 19.	Department Head *Employee Profile
4. Sex.	Department Head **Attendance Record (calendar)
5. Position title.	Department Head ** Attendance Record (calendar)
6. Time of day and day of week on which employee's workweek begins.	Department Head ** Attendance Record (calendar)

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| 7.  | Hours worked each workday and total hours worked each workweek  | Department Head<br>** Attendance Record (calendar) |
| 8.  | Total overtime resulting in compensatory time for the workweek, that is the excess compensatory time for overtime worked which amount is over and above all straight time hours.  | Department Head<br>** Attendance Record (calendar) |
| 9.  | Regular hourly rate of pay for any week when overtime is worked, the basis on which wages are paid (such as \$200/week, \$12,500/year) and the amount and nature of each payment. | Payroll-Fiscal Affairs, OCM<br>Payroll Warrant     |
| 10. | Total weekly straight time earnings for hours worked during the workweek.   | Payroll-Fiscal Affairs, OCM<br>Payroll Warrant     |
| 11. | Total additions to or deductions from wages paid each pay period along with dates, amounts and nature of said additions and deductions.   |  |
| 12. | Total wages paid each pay period.   |  |
| 13. | Rate of payment and the pay period covered by payment.  |  |

II. The following information is required to be kept on exempt employees:

- | <u>REQUIRED INFORMATION/RECORD</u>                                  | <u>PRIMARY RESPONSIBILITY FOR INFORMATION/RECORD AND FORM</u> |
|---|---|
| 1. Name of employee in full.  | Department Head<br>*Employee Profile                          |
| 2. Home address, including zip code.                                | Department Head<br>*Employee Profile                          |
| 3. Date of birth, if under 19.                                      | Department Head<br>*Employee Profile                          |
| 4. Sex.   | Department Head<br>*Employee Profile                          |
| 5. Position title.  | Department Head<br>*Employee Profile                          |
| 6. Time of day and day of week on which employee's workweek begins. | Department Head<br>**Attendance Record (calendar)             |

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| 7. | Total wages paid each pay period.   | Payroll-Fiscal Affairs, OCM<br>Payroll Warrant |
| 8. | Date of payment and the pay period covered by payment.  | Payroll-Fiscal Affairs, OCM<br>Payroll Warrant |
| 9. | The basis on which wages are paid so that the employee's total remuneration for employment for each pay period can be calculated including fringe benefits. | Payroll-Fiscal Affairs, OCM<br>Payroll Warrant |

III. The following records must be preserved for three years:

- | <u>REQUIRED INFORMATION/RECORD</u>  | <u>PRIMARY RESPONSIBILITY FOR INFORMATION/RECORD AND FOR</u>                       |
|---|--|
| 1. Payroll records.   | Payroll-Fiscal Affairs, AOTC<br>All Payroll Records                                |
| 2. Collective bargaining agreements and all amendments or additions thereto.                  | Human Resources Department<br>Collective Bargaining<br>Agreements and Amendments   |
| 3. Plans, trusts and employment contracts.  | Department head in the Trial Court who signs plans, trusts and employment contract |
| 4. Certificates and notices prepared in regard to application and implementation of the FLSA. | Department head in the Trial Court who signs any such documents                    |

IV. The following records must be preserved for two years:

- | <u>REQUIRED INFORMATION/RECORD</u>  | <u>PRIMARY RESPONSIBILITY FOR INFORMATION/RECORD AND FORM</u> |
|---|---|
| 1. Basic employment.  | Department Head<br>Employee's Personnel File                  |
| 2. Daily starting and stopping times of employees.  | Department Head<br>**Attendance Record (calendar)             |
| 3. Worktime schedules which establish the hours and days of employment of individual employees. | Department Head<br>**Attendance Record (calendar)             |
| 4. Basic earnings records   | Payroll-Fiscal Affairs, OCM<br>Payroll Warrant                |
| 5. Salary schedules used in computing   | Payroll-Fiscal Affairs, OCM                                   |

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| straight time earnings of employees                       | Payroll Warrant                                |
| 6. Records of additions to or deductions from wages paid. | Payroll-Fiscal Affairs, OCM<br>Payroll Warrant |

- \* The Employee Profile (Appendix C, Form F6) as contained in Section 5.500 of this Manual.
- \*\* The Attendance Record (calendar) (Appendix C, Form F3) as contained in Section 7.000 of this Manual.

Note: The time of day and day of week on which an employee's workweek begins, and time of day an employee's workday ends should be recorded on the top right hand side of the Attendance Record form. (This form will be revised to provide space for recording aforesaid information.)

All of the records required to be maintained under the FLSA shall be made available within 72 hours following notice from the U.S. Department of Labor and shall be open to them at anytime for inspection and transcription.

**26.500 Enforcement** - the FLSA authorizes representatives of the U.S. Department of Labor to investigate and gather data concerning wages, hours and other employment practices; enter and inspect an employer's premises and records; and question employees to determine whether any person has violated any provision of the FLSA. Every effort is made to resolve the issue of compliance and payment of back wages at an administrative level. However, the FLSA also provides the following enforcement procedures:

- An employee may file suit to recover back wages and an equal amount in damages, plus attorney's fees and court costs.
- The Secretary of Labor may file suit on behalf of the employees for back wages and an equal amount in damages.
- The Secretary may obtain a court injunction to restrain any person from violating the law, including unlawfully withholding proper minimum wage and overtime pay.
- Employers who have willfully violated the law may face criminal penalties, including fines and imprisonment.
- Employees who have filed complaints or provided information during any investigation may not be discriminated against or discharged for having done so. If they are, they may file a suit or the Secretary of Labor may file a suit on their behalf for relief, including reinstatement to their jobs and payment of wages lost plus monetary damages.

Any statute of limitations applies to the recovery of back wages except in case of willful violations, in which case a 3-year statute of limitations would be applicable.

**26.600      Accrued Compensatory Time Earned Prior to April 15, 1986**

Accrued compensatory time resulting from overtime work performed prior to April 15, 1986 is not subject to the above procedure nor the provisions of the FLSA. Such compensatory time was earned on an "hour-for-hour" basis and remains as such when compensatory time off is taken by an employee.

The department head is responsible to see that:

1.      His/her employees with compensatory time earned and accrued prior to April 15, 1986 take all such compensatory time off prior to termination of employment, including retirement;
2.      Separate records are kept on each employee for overtime/accrued compensatory time prior to April 15, 1986 and overtime/accrued compensatory time after April 15, 1986 as per the above procedure for records required by the FLSA.

**26.700      General - department heads are responsible for:**

- a.      establishing internal methods and controls for managing overtime, compensatory time off and required records pursuant to the above procedure;
- b.      advising their employees on the above procedure.

**26.800      List of Positions**

The following list provides examples of positions classified as exempt by type of exemption (administrative, professional, elected official or executive). These positions are exempt from the overtime provisions of the FLSA:

ADMINISTRATIVE

Administrative Assistant to Commissioner of Probation  
Administrative Assistant for Intergovernmental Relations  
Affirmative Action Officer  
Assistant Clerk-Magistrate  
Assistant Director of Security  
Assistant Court Administrator  
Assistant Manager, Fiscal Affairs



Assistant Register of Probate  
Assistant Secretary to the Justices  
Assistant Supervisor of Court Probation Services  
Assistant Supervisor of Probation Services  
Bail Administrator  
Budget Analyst  
Chief Court Officer  
Clinic Director  
Computer Systems Supervisor - OCM  
Court Administrator  
Court Planner  
Deputy Chief Title Examiner  
Deputy Recorder  
Director of Systems Operations and Planning  
First Assistant Register of Probate  
Human Resources Coordinators  
Implementation Coordinator I  
Implementation Coordinator II  
Internal Auditor I  
Internal Auditor II  
Jury Census Manager  
Operations Manager  
Personnel Administrator  
Project Leader/Systems Analyst  
Regional Coordinator  
Research Manager  
Secretary to the Justices  
Systems Analyst

PROFESSIONAL

Administrative Attorney  
Assistant Title Examiner  
Associate Engineer  
Associate Labor Counsel  
Court Chaplin  
Deputy Engineer  
Foreign Language Interpreter  
Labor Counsel  
Land Engineer I  
Law Library Coordinator  
Land Engineer II  
Law Clerk  
Legal Counsel - District Court Department  
Law Librarian  
Head Law Librarian

Physician  
Psychiatrist  
Psychologist  
Title Examiner

ELECTED OFFICIALS

Clerk of Courts - Superior Court Department  
Registrar of Probate

EXECUTIVE

Departmental Chief Justice  
OCM Department Heads  
Associate Justice  
Court Administrator  
Chief Engineer  
Chief Housing Specialist  
Chief Probation Officer  
Chief Title Examiner  
Clerk Magistrate (except Superior Court Department)  
Commissioner of Probation  
Deputy Commissioners  
Executive Director  
First Deputy Commissioner  
First Justice  
Jury Commissioner  
Recorder of the Land Court  
Supervisor of Court Probation Services  
Supervisor of Probation Services

For more information on the FLSA and whether a position is exempt, contact the Human Resources Department.