

**COUNTY OF ORANGE, VIRGINIA  
PERSONNEL POLICIES MANUAL**

**OVERTIME AND PROVISIONS OF FAIR LABOR STANDARDS ACT**

**POLICY NO.: 4.6**

**EFFECTIVE: 04/30/96**

**REVISED: 07/01/04**

**09/01/06**

**03/23/10**

**01/08/13**

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**OVERVIEW:** The County is committed to complying with the provisions of the Fair Labor Standards Act (FLSA). This policy defines the County's compensation activities as dictated by the FLSA.

**SCOPE:** This policy applies to all regular employees, including employees of Constitutional Officers subject to the County's personnel policies.

**DEFINITIONS:**

1. Fire protection employee: An employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who – (1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by the County, and (2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.
  
2. Law enforcement employee: An employee (1) who is a Sheriff's deputy or other uniformed or plain-clothed member of a body of officers and subordinates who are empowered by State 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 to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a court 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.

3. Overtime (FLSA): Overtime is defined as time worked or paid leave by an employee (excluding employees in law enforcement and fire protection as defined herein) in excess of 40 hours during a seven (7) consecutive day work period. Overtime for law enforcement personnel shall be time worked or on paid leave in excess of 171 hours during a 28 consecutive day work period. Overtime for fire protection personnel shall be time worked or on paid leave in excess of 212 hours during a 28 consecutive day work period. Non-FLSA overtime includes hours worked in excess of the employee's scheduled hours but less than the eligibility requirement for FLSA overtime stated above.

## **PROVISIONS:**

### A. Exemption Status

All positions within the County government are identified as either exempt or nonexempt under FLSA.

Exemption status is determined by the salary, duties, and responsibilities of each individual position and the application of the FLSA exemption test criteria for Administrative, Professional, or Executive exemption categories.

### B. Hours Worked – As Defined by FLSA

1. All hours, which an employee is required or permitted to be performing job, related tasks, even if the employee is performing the work during a designated meal break.
2. All hours that an employee is required to be on duty on County premises or at a prescribed work place.
3. "On-Call" time. As a general rule, a non-exempt employee who is designated as "on-call" and who is off county premises is not working and need not be compensated unless required to respond to some need. When activated, the employee is entitled to compensation for all time necessary to respond, including time spent on the telephone and travel time. On-call time may become fully compensable if the requirements of the job result in the employee not being able to use the time effectively for his own purposes. Three factors will generally be considered in making this determination: (1) how often the employee is typically required to respond within an on-call period; (2) how quickly the employee must respond when contacted; (3) if the employee is free to move about within a given area.

4. Time spent traveling in a capacity which is not considered normal home-to-work travel. Such travel time includes:
  - a. Traveling to a work site in another city for a special one day assignment.
  - b. Travel which is part of the principal activity of an employee's job during the work day. For example: travel between job sites.
  - c. Travel which requires the employee to be away from home overnight. When away from the home community, hours worked are calculated by using a comparison to the typical start and finish times of a regular work day.

C. Overtime

With the exception of law enforcement and fire and rescue employees, no nonexempt employee shall be authorized or permitted to work more than 40 compensable hours within a single work week unless specifically authorized by the Department Director, Constitutional Officer, or County Administrator, as appropriate, in accordance with this policy.

The Sheriff's Office has established a 28 day standard work period for law enforcement employees. Law enforcement employees receive a salary based on 160 compensable hours during a single work period. No nonexempt law enforcement employee shall be authorized or permitted to work more than 160 compensable hours within a single work period unless specifically authorized by Sheriff's Office policy or appropriate authority within the office. If an employee works more than 160 hours during a 28 day standard work period, he will be compensated for the hours in excess of 160 but less than 172 at his standard rate of pay. If an employee works more than 171 hours, he will be compensated for all hours in excess of 171 as stated in Section E of this policy.

Additionally, law enforcement employees who work special event hours will be paid at the rate paid by the special event vendor (but no less than their hourly wage). Hours worked at special events will be counted toward overtime hours for the pay period to the extent required by FLSA.

The Fire and EMS Department has established a 28 day standard work period for Firefighter/Medics performing shift work. Shift workers receive a salary based on 212 compensable hours during a single work period. All hours worked in excess of 212 are reimbursable as overtime. In addition, paid time off taken for regularly scheduled hours will be included in the overtime hours calculation. Overtime will be managed in accordance with shift schedules, which are typically 216 or 240 hours during a work period. Variations from established schedules must be specifically authorized by the Director of Fire and EMS.

**Example 1:** if a Fire and EMS shift worker is scheduled to work 240 hours during a 28 day standard work period, but the employee is taking 20 hours of annual leave. If the employee otherwise works 220 hours, the employee will be compensated as follows: 212 hours as the employee's regular compensation; 20 hours of overtime compensation at the rate of 1 ½ times the employee's normal rate of pay with those 20 hours also being deducted from the employee's leave bank; 8 hours of overtime compensation at the rate of 1 ½ times the employee's normal rate of pay.

**Example 2:** If an employee's regularly scheduled hours are 212, and the employee takes 20 hours of paid time off, but then subsequently picks up 20 "extra" hours, those hours will be paid at the employee's normal rate of pay because they were not a part of the employee's regular schedule.

D. Authorizations for Overtime

With the exception of the Fire and EMS Department, authorization to work in excess of 40 hours per single week or 160 hours in a work period shall be provided only when workloads, emergencies, or unusual work demands require such action in order to meet minimum operational, regulatory, or statutory requirements. Overtime in the Fire and EMS Department may be authorized as described in Section C of this policy.

E. Compensation for Compensable Hours in Excess of 40/171/212 within a Single Work Week/Period.

It is the policy of the County that compensation for compensable hours worked by nonexempt personnel in excess of 40/171/212 within a single work week/period shall be paid overtime pay.

1. Overtime in excess of 40/171/212 hours worked will be paid at the rate of one and one-half times the annual hourly equivalent of the employee's salary, and will be paid in the first feasible pay period after it is earned.

2. Overtime earned with equal to or less than 40/171/212 hours worked will be paid at the rate of the annual hourly equivalent of the employee's salary and will be paid in the first feasible pay period after it is earned. This recognizes the fact that time worked in excess of the standard expected during any week/period is overtime and compensable.
3. At the time the work record is submitted to the Finance Department, the employee may request, by filling out the "Request for Compensatory Time" Form provided, to be reimbursed with compensatory time in lieu of cash as described in Personnel Policy 4.7.
4. When compensatory time is intended as a substitute for overtime pay, it must be given at the same rate at which overtime pay would have been earned as described in this section.

F. Schedule to Avoid Overtime

Supervisors are encouraged to minimize overtime liability through effective scheduling.

1. For example, when an overtime-eligible employee is asked to work 10 hours in a given day, that employee may be given two (2) hours off later in the same work week/period. This is an example of effective scheduling that avoids overtime liability.
2. With the exception of law enforcement and Fire and EMS employees, if the same employee works 10 hours one day (resulting in a 42 hour total for that week) and is given two (2) hours off in the following week/period, the County's obligation has not been satisfactorily met.
3. When possible, supervisors should not authorize employee absences when it will generate the requirement for overtime by other employees.

G. Record Keeping

Department Directors/Constitutional Officers shall maintain records of all hours worked for nonexempt employees, recording overtime and any compensatory time earned. Monthly, after being verified by the employee concerned, these records will be submitted to the Finance Department for documentation in the individual employee's personnel file (electronic and paper) and for validation and payment of overtime.

H. Budgeting Overtime

1. Each year, the Board of Supervisors will appropriate resources for overtime.
2. Department Directors and Constitutional Officers are responsible for managing within the overtime resources appropriated each year.
3. The Finance Department will provide Constitutional Officers and Department Directors a monthly report of overtime used and balances remaining.