

## General Personnel

### **Administrative Procedure - Compensable Work Time for Non-Exempt Employees Under the FLSA**

**Important** - Cooperative officials should contact the Board Attorney for application of the Fair Labor Standards Act (FLSA) to specific situations. The information contained in this procedure, and any information provided in the hyperlinks contained in it, should be confirmed with the Board Attorney before its application to a specific situation.

#### Resources

Overview - [www.dol.gov/whd/flsa](http://www.dol.gov/whd/flsa).

For help determining whether time spent on work-related activities is compensable as “hours worked,” see the U.S. Dept. of Labor’s [FLSA Hours Worked Advisor](http://www.dol.gov/whd/flsa).

Volunteers - [www.dol.gov/elaws/esa/flsa/docs/volunteers.asp](http://www.dol.gov/elaws/esa/flsa/docs/volunteers.asp).

#### Compensable Time Defined for Non-Exempt Employees

The amount of pay due an employee cannot be determined without knowing the total number of hours actually worked by that employee in each workweek. An employee must be paid for all of the time considered to be hours worked, and all time that is *hours worked* must be counted when determining overtime.

**Non-Exempt Employee** - The term *non-exempt employee* refers to employees who are not exempt from the overtime provisions in the wage and hour laws. See administrative procedure 5:35-AP1, *Fair Labor Standards Act Exemptions*.

**Hours Worked** - Non-exempt employees must be compensated for all hours worked in a workweek. In general, hours worked include:

- All the time an employee must be on duty;
- All the time an employee must be on the employer’s premises;
- All the time an employee must be at any other prescribed place of work; and
- Any additional time the employee is allowed, i.e., “suffered or permitted” to work (commonly referred to as “working off the clock”).

**Suffered or Permitted to Work** - If an employer knows or has reason to know that a non-exempt employee starts work early or continues to work late, it is considered work time. 29 C.F.R. §785.11.

This includes knowing or having reason to know that an employee works at home, e.g., as when a Building Principal’s secretary calls for substitutes early in the morning). 29 C.F.R. §785.12.

If an employee works additional straight time, at the regular rate of pay, or overtime hours without authorization, that employee must still be compensated but may be disciplined for violating Board policy.

**Volunteering to Perform Regular Work** - Non-exempt employees may not volunteer to perform their regular work duties off-the-clock and without compensation. 29 U.S.C. §203(e)(4)(A). An employee must be paid even if he or she offers to do the work on his or her *own time*. Employees may not waive wage and hour law requirements.

**Volunteering to Perform Services that Are Not the Same as Regular Work** - Non-exempt employees may volunteer to perform services under these conditions:

1. The volunteer services are not the same as or similar to the employee's regular work duties,
2. The employee offers the services freely and without coercion, direct or implied, and
3. The employee provides the services without promise of compensation although a volunteer may be paid "expenses, reasonable benefits, or a nominal fee to perform such services." 29 U.S.C. §203(e)(4)(A), 29 C.F.R. §553.101 and 103.

A fee is not nominal if it is a substitute for compensation or tied to productivity. 29 C.F.R. §553.106(e). While the specific circumstances in each case must be analyzed, the Cooperative will generally limit nominal pay to employees for volunteer services to no more than 20% of what the Cooperative would otherwise pay to hire an employee for the same services. See *Wage and Hour Division (WHD) Opinion Letters* FLSA 2005-51 (11-10-05); FLSA 2006-28 (8-7-06); and FLSA 2006-28 (10-7-06). See also *WHD Opinion Letters* FLSA 2004-6 (7-14-04); and FLSA 2004-8 (9-7-04) for examples of non-exempt school employees serving as volunteer athletic coaches. U.S. Dept. of Labor WHD opinion letters are available at: [www.dol.gov/whd/opinion/search/index.htm?FLSA](http://www.dol.gov/whd/opinion/search/index.htm?FLSA).

#### Examples of Hours Worked for Non-Exempt Employees

- Meal periods, unless the employee is completely relieved of all duties and free to leave the duty post for at least 30 minutes. Teacher aides who must supervise students during their lunch are not considered relieved of duties. Employees who eat at their desk and answer phones or otherwise perform work are not considered relieved of duties.
- Attendance at inservices, meetings, or lectures unless: (1) attendance is outside the employee's regular working hours, (2) attendance is voluntary, (3) the activity is not related to the employee's job, and (4) the employee performs no productive work for the NDSEC.
- Coffee breaks or rest periods of 20 minutes or less.
- Work done at home if the supervisor knows or should have known that such work was done.
- Work done before or after regular hours or on weekends.
- On-call time if the employee is required to remain on the employer's premises or so close that he/she is unable to use the time effectively for his/her own purposes while on call.
- Transporting material to a worksite before the start of the workday.
- Time spent preparing for work, e.g., bus drivers doing safety checks before the route or securing the bus after the route.
- Clean up work at the end of a shift.
- Travel time during the workday from one job site to another, e.g., non-exempt school nurses traveling from one school to another.
- Travel time during the regular working hours, even if it is the weekend.
- Attending a Board meeting at night either to take minutes or perform some other required or assigned duty.

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