




# OREGON DEPARTMENT OF FISH AND WILDLIFE POLICY

## Human Resources Division

<b>Title:</b>	<b>Fair Labor Standards Act</b>	<b>HR_420_04</b>
<b>Supersedes:</b>	HR_420_04, dated February 1, 2011	
<b>Applicability:</b>	Classified (where not in conflict with the labor agreement), executive service, management service, and temporary employees (where not in conflict with the labor agreement).	
<b>Reference:</b>	Fair Labor Standards Act (FLSA), 29 C.F.R. 21-219, 500-899; FLSA Act Amendments of 1985; Bureau of Labor and Industries Handbook on Oregon Wage and Hour Laws. State Policy 20.005.20	
<b>Effective Date:</b>	May 15, 2012	<b>Approved:</b> 

### I. PURPOSE

To define working hours and overtime eligibility and requirements consistent with the provisions of the Fair Labor Standards Act (FLSA) and Oregon Wage and Hour Laws.

### II. DEFINITIONS

A. Executives, managers, or supervisors are exempt from the FLSA if they meet the following conditions:

1. The employee shall supervise two or more employees; and
2. The employee shall have hiring and firing authority or be able to make recommendations that carry weight, and
3. The employee shall regularly exercise independent judgment and discretionary power, and
4. The employee's primary duty (more than 50 percent of work time) shall be the management of the enterprise or a department, and
5. The employee shall be paid on a salary basis.

B. Administrative employees are exempt from the FLSA if they meet the following conditions:

1. The employee shall perform responsible non-manual work directly related to management policies or business operations; and
2. The employee shall regularly assist an executive, or perform work under only general supervision; and

3. The employee shall regularly exercise independent judgment and discretionary power; and
  4. The employee's primary duty (more than 50 percent of work time) shall be administrative, and
  5. The employee shall be paid on a salary basis.
- C. Professional employees are exempt from the FLSA if they meet the following conditions:
1. The employee shall perform work requiring an advanced type of knowledge usually obtained through a prolonged course of study, or
  2. The employee shall perform work that is original or creative in an artistic field; and
  3. The employee shall regularly exercise independent judgment and discretionary power; and
  4. The employee's primary duty (more than 50 percent of work time) shall be professional as set out in C., 1 and 2 above; and
  5. The employee shall be paid on a salary basis.

### III. POLICY

The Department of Fish and Wildlife shall comply with the provisions of the Fair Labor Standards Act (FLSA) and Oregon Wage and Hour Laws. The department is required to comply with both federal and state laws. When standards under one law differ from those under the other, the standards most generous to the employee must be met. For example, if the state minimum wage is higher than the federal minimum wage, the state minimum wage must be paid. Likewise, if an employee qualifies as exempt under state law but not under federal law, the department must comply with federal law.

- A. Using FLSA guidelines, the Human Resources Administrator, in consultation with the Human Resources Analyst, shall determine the status of each employee, either exempt or non-exempt from overtime, using Department of Labor (DOL) and Bureau of Labor and Industries (BOLI) guidelines. The Payroll Unit shall keep accurate records of FLSA status, workweek, and overtime. The Human Resources Division and field offices shall conspicuously post notices regarding wage and hour laws as required by DOL and BOLI.
- B. Exempt employees shall work a professional workweek on a salaried basis and shall not be eligible for overtime unless authorized by a collective bargaining agreement. An exempt employee may work a flexible and/or irregular work schedule with supervisory approval.
- C. The Human Resources Administrator shall ensure any deduction made to an exempt employee's pay is appropriate. Unlawful deductions are prohibited. Exempt employees who believe an improper deduction has been made from their pay may submit a written complaint to the department's payroll or human resources office. The department shall respond to the complaint within 15 calendar days of receipt. If the department finds the deduction to be improper, it shall reimburse the employee for the deduction. If the department and employee do not agree about the deduction, the department shall contact the Department of Administrative Services, Human Resource Services Division, for assistance.

- D. Exempt employees shall use accrued leave for partial day absences due to personal reasons or because of illness or injury. If an exempt employee does not have sufficient appropriate paid leave accrued to cover the absence, the Human Resources Administrator shall reduce the employee's salary for that portion of the absence not covered by paid leave.
- E. Unless otherwise specified in the collective bargaining agreement for represented employees, or as established in writing for any other employee, the basic workweek begins at 12:00 midnight Sunday and ends at 11:59 p.m. the following Saturday. Generally, employees occupying positions with a fixed, regular work schedule shall work a regular business week, such as Monday through Friday, 8:00 AM to 5:00 PM. Employees may request or be required to work flexible or irregular schedules, subject to supervisory approval or requirement, based upon business necessity. Any flexible or irregular schedule is subject to change.
- F. Non-exempt employees shall be eligible for overtime when time worked is in excess of 40 hours in a workweek. If budgeted funds for the payment of overtime are not available, such overtime shall be allowed in compensatory time off at time and one half with prior agreement of the employee. Overtime shall be paid in cash at time and one half if department budgeted funds for the payment of overtime are available. The maximum number of hours that may be accumulated for compensatory time is 240 hours. The supervisor may schedule any employee to take compensatory time off in order to reduce the amount of accrued compensatory time that would normally have to be paid in cash. If the supervisor is unable to schedule the time off and the employee reaches the maximum, the appropriate deputy director shall authorize cash payment of the hours exceeding the maximum. At termination, compensatory time shall be cashed out at the higher of the employee's final regular rate, or the average regular rate during the last three years of employment.
- G. Second job situations in state government:
1. The state usually must pay overtime for non-exempt employees who work in two or more positions in one or more state agencies, if the employee works in excess of 40 hours in a workweek:
    - a. If a full-time department employee applies for a second state job, the second agency shall be responsible for any overtime pay liability. However, the second agency may refuse to hire the employee because of potential overtime pay liability.
    - b. If a part-time department employee applies for a second state job, the two agencies shall mutually agree on the employee's FLSA status and any overtime pay obligation. Generally, the state agency employing the employee at the time the employee exceeds 40 hours in a workweek shall pay the overtime.
  2. For non-exempt jobs, a hiring agency may hire a state employee without overtime pay liability if the following exceptions apply: (The exceptions require a difficult, fact-specific legal analysis. Managers shall consult with a Human Resources Analyst if they think the exceptions could apply).
    - a. Under the FLSA, the second position is in a different capacity than the employee's regular job and is undertaken on an occasional or sporadic basis, solely at the employee's option; or

- b. Under the FLSA, the second job is for a different state agency under circumstances where the two state agencies would be considered separate and not joint employers; and
  - c. Under Oregon law, the collective bargaining agreement expressly waives application of ORS 653.268.
- H. Supervisors and managers are responsible for assigning work and work schedules, ensuring any overtime worked is authorized. Employees shall complete and submit to their supervisor for approval an Overtime Authorization (xls) (@ <http://inside.dfw.state.or.us/hr/forms/>) prior to working any overtime. FLSA requires payment for overtime even if overtime worked is unauthorized. Employees who work unauthorized overtime are paid for overtime worked but, depending on the circumstances, may be subject to disciplinary action.
- I. If an employee performs work which is the same or similar to the employee's regularly assigned job duties, it is considered time worked for computing overtime. In this circumstance, employees shall not volunteer their time.
- J. Employees residing on department premises or working at home:
  - 1. Non-exempt employees residing on department premises on a permanent basis or for an extended period of time are not considered working all the time the employee is on the premises. Ordinarily, the employee may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when the employee may leave the premises for the employee's own purposes. During these periods outside of the employee's regularly scheduled work hours, the employee is not eligible for overtime or other premium pay.
  - 2. If an employee is required to be at his/her residence at any given time outside of the employee's scheduled work hours, the employee may be eligible for differential pay as described in HR Policy 420\_03, Pay Differentials.

#### **IV. POLICY CLARIFICATION**

- A. Availability of budgeted funds means that payment for overtime is included in the department's legislatively approved budget; i.e., funds specifically for the purpose of compensating employees from which overtime which payments can be withdrawn, not funds available generally.
- B. Different capacity means employment that does not fall within the same general occupational category as regularly assigned duties.
- C. A flexible work schedule varies either by the number of hours worked or the starting and stopping times on a daily basis, but not necessarily each day. An alternate work schedule has the same starting and stopping times each day, such as four ten-hour days.
- D. Occasional or sporadic means infrequent, irregular or occurring in scattered instances.
- E. Employees requesting either a flexible or an alternate work schedule shall complete the attached form.

Attachment A Flexible/Alternate Work Schedule Request Form

### Flexible/Alternate Work Schedule Request

The purpose of this form is to indicate an employee’s request for a flexible, or alternate work schedule. This form is applicable for employee requests for flexible, or regularly occurring, routine alternative work schedules. Management retains the right to assign work schedules to meet the needs of the department. This form does not need to be completed for irregular, non-routine changes in work schedule assigned by the manager.

**Flexible work schedule:** A work schedule which varies the number of hours worked on a daily basis, but not necessarily each day, or a work schedule in which starting and stopping times vary on a daily basis, but not necessarily each day, but does not exceed 40 hours in a workweek.

**Alternate work schedule:** Anything other than a regular work schedule or flexible work schedule.

Certain employees of ODFW occupy positions with fixed, regular work schedules, which require that those employees normally work a regular business schedule, such as 8:00 AM to 5:00 PM, Monday through Friday. However, employees in fixed, regular work schedules may request a flexible, or an alternate work schedule from their supervisor, understanding the following criteria will be used when considering any request:

- All full-time employees must work a 40-hour week.
- Operational requirements must be met.
- Service to the customer must be maintained or improved.
- Costs to department or state will not be increased.
- Each Section/Office must be covered during normal or core business hours (8-5).
- Flexible time/Alternate work schedules will not diminish the ability of the department to assign responsibility and accountability to individual employees for the provision of services and performance of their duties.
- Flexible time/Alternate work schedules should not create a hardship for other employees.

**Description of  Flexible /  Alternate Work Schedule (check type of schedule requested):**

Start Time \_\_\_\_\_ Stop Time \_\_\_\_\_

Days Worked \_\_\_\_\_ Hours Worked Per Day \_\_\_\_\_

I understand this request is an exception to the normal workweek of the Agency. All exceptions will be reviewed periodically (no less than annually) or during changes to organizational or service related functions. Employees may be requested to resume their normal business schedules with reasonable notice.

Employee \_\_\_\_\_ Sign Date \_\_\_\_\_

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Approved \_\_\_\_ Denied \_\_\_\_ (include reason) \_\_\_\_\_

Supervisor \_\_\_\_\_ Sign Date \_\_\_\_\_

Div. Admin. or Reg. Mgr. \_\_\_\_\_ Sign Date \_\_\_\_\_

c: Personnel file  
Working file