

SUBJECT: WAGE AND HOUR PROVISION OF FAIR LABOR  
STANDARDS ACT OF 1938, AS AMENDED

EFFECTIVE  
DATE: 03-01-10 (replaces 08-04-97)

APPROVED BY:

Reviewed (no changes): 05-28-10 03-31-11

Executive Director

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POLICY

Employees of McIntosh Trail CSB are covered by the Wage and Hour provisions of the Fair Labor Standards Act (FLSA) of 1938, as amended unless specifically exempted. The provisions of the FLSA include guidance for payment of minimum wages, maximum hours of work with concurrent overtime compensation, establishment of work periods, and the requirement of appropriate recordkeeping.

PROCEDURE

A. Categories of Employees

1. **Exempt** - those employees who are exempt from the minimum wage and overtime provisions of the FLSA by meeting both the salary basis and duties test of the Executive, Administrative or Professional exemption.
2. **Non-Exempt** - those employees who are covered by the minimum wage and overtime provisions of the FLSA

Designation of exempt or non-exempt status will be made by the Human Resources Department using the FLSA Exemption test. Such designations are made on an individual basis and on the basis of the actual work assignments of each employee.

B. Work Periods

1. The work period is a fixed period of seven consecutive 24 hour periods.
2. A normal work period must be established in writing for each employee - both exempt and non-exempt - and must be on file in the Human Resources Department. The work period must define the time of day and day of the week when the employee's work period begins and ends. (See Attachment #1).
3. An established work period may be changed if the change is intended to be permanent and not for the purpose of avoiding overtime provisions of the FLSA.

C. Hours Worked

1. "Hours worked" includes all time an employee is required to be on duty, or on the employer's premises, or at a prescribed workplace for the employer, and all time during which the employee is suffered or permitted to work. Non-exempt employees must be compensated for all time which the employer knows or has reason to know is being worked - not simply the time which an employee has been required or asked to work. It is not sufficient simply to have a rule against "unauthorized" work. Managers may not ignore work which employees do "on their own time". If an employee continues to work "unauthorized" time, disciplinary action may be warranted.
2. Any time worked outside of the normal schedule must have prior approval from the supervisor and/or program manager.

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PROCEDURE (Continued)

D. Meal Periods

1. Meal periods are not counted as "hours worked".
2. Although meal periods are not required by the FLSA, it is the policy of McIntosh Trail CSB that meal periods be established for employees, where possible, and that where established, they be at least 30 minutes long.
3. A meal period must be an uninterrupted period during which the employee has no duties assigned to perform.
4. If an employee is required to provide care to consumers during meal periods, the meal period is considered to be time worked.

E. Break Periods

1. McIntosh Trail CSB is not required to provide formal break periods to its employees. The center/service site director has the discretion to schedule up to 2 break periods per day within their work unit if work assignments permit and the functioning of the program will not be negatively affected. Discretionary break periods should not exceed 10 minutes and will be counted as work time.
2. Employees may not lengthen a meal period, report late, or leave early by working through a break period.

F. Attending Meetings/Training Programs, etc.

1. Time spent attending meetings, training programs, and similar activities must be counted as hours worked, unless all of the following criteria are met:
  - a. The attendance is outside the employee's regular working hours;
  - b. The attendance is voluntary;
  - c. The course, lecture, or meeting is not directly related to the employee's job; and
  - d. The employee performs no productive work related to the employee's job while in attendance.
2. If employees independently attend school, college, or trade school after hours, the time is not counted as hours worked, even if the courses are related to the job.

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PROCEDURE (Continued)

G. On-Call Time

1. On-call time is not considered work time unless the employee is required to remain at a specific place or in such a proximity to the workplace that the employee may not use the time for the employee's own purposes.
2. An employee who is required to carry a paging device or cell phone so that the employee can be reached after work hours is not considered to be working, unless contacted, and does not need to be compensated.
3. If an employee is required to report to work during their normal off duty time, the time spent at the work site is considered to be hours worked and must be recorded and compensated.

H. Travel Time

1. Normal travel from home to work and return is not work time. This is true whether the employee has a fixed workplace or works at different locations.
2. If an employee is required to stop by the primary work site for instructions or to pick up materials, then travel from the primary work site to another work assignment must be counted as hours worked.
3. Travel between an employee's normal work site and another place of assignment, or travel between one assignment and another during the workday, is considered hours worked.
4. Travel between home and the place of assignment on a one day assignment to another site by an employee who normally has a fixed place of work is hours worked. However, the amount of time that the employee normally commutes to work will be deducted and not counted as hours worked.
5. When travel keeps an employee away from home overnight, the work day begins and ends at normal time unless additional hours of bona fide work are performed. The usual meal time exclusion is still applicable.

I. Management of Work Hours

1. The State Compensation Plan is based on all employees working a minimum of 40 hours each work period, including time off for State holidays and approved leave.
2. Managers are responsible for taking affirmative steps to insure that work is performed only during scheduled work hours. It is strongly recommended that non-exempt employees not be allowed to occupy their work stations before their scheduled day begins, during meal periods, and after their work day ends.

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PROCEDURE (Continued)

I. Management of Work Hours (Continued)

3. Managers must give advance approval for the accrual of comp time. However, if a non-exempt employee actually works over 40 hours in their work period, compensation must be granted regardless of whether such accrual has been approved in advance. In situations where comp time is worked without management approval, employees should be warned of possible disciplinary action.
4. It is the responsibility of managers to minimize the occurrence of overtime to the extent practicable. If it appears that a non-exempt employee will work overtime prior to the end of the work period (e.g. because the employee worked over eight hours in one day), the employee should be given time off prior to the end of the work period in order to avoid accrual of comp time. This is an adjustment of the work schedule within the work period. Similarly, if a non-exempt employee uses annual or sick leave during the work period where it appears that comp time will be accrued (e.g. because the employee worked over eight hours in one day), the employee's schedule should be adjusted during the work period (i.e. the employee given time off) in order to avoid accrual of comp time. This may mean that, where possible, leave approved during the affected work period be rescinded and comp time off be given.
5. Exempt employees are not entitled to compensatory time for hours worked beyond the standard work week.

J. Overtime Procedures

1. It is the policy of McIntosh Trail CSB to provide FLSA compensatory time off for non-exempt employees rather than monetary overtime compensation. **Comp time must have prior approval by the supervisor.**
2. FLSA compensatory time is earned at the rate of one and one-half hours for each hour of overtime worked. FLSA compensatory time is not earned until the employee is placed in an overtime situation (i.e. the employee must have worked at least eight (8) minutes beyond the normal work hours of the established work period.
3. The actual amount of FLSA compensatory time earned (rounded to the closest quarter of an hour) should be recorded on the McIntosh Trail Work Hours Record. (See Attachment #2)
4. The accrual and usage of FLSA compensatory time must be recorded on the employee's official Time and Leave Record (Attachment #3) which is maintained by the designated leave keeper.

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PROCEDURE (Continued)

5. The maximum amount of FLSA compensatory time that can be accrued is 240 hours. (NOTE: This means that only 160 hours of actual work must be performed to meet the maximum FLSA compensatory time.) Employees who accrue more than the maximum of 240 hours of FLSA compensatory time must receive cash payment for FLSA compensatory time in excess of 240 hours. The cash payment will be based on the employees hourly rate in effect when the comp time was earned.
  6. An employee must be permitted to use FLSA compensatory time within a reasonable period after making the request if the granting of such time off does not unduly disrupt the operations of the unit.
  7. Managers may require that employees take FLSA compensatory time in lieu of annual leave. Employees may request FLSA compensatory time in lieu of sick leave or personal leave.
  8. Employees must be paid for unused FLSA compensatory time upon termination from McIntosh Trail CSB at the higher of the following rates:
    - a. The average regular rate received by the employee during the last three years of employment; or
    - b. The final regular rate received by the employee.
- K. Recordkeeping
1. It is required that a written work period be established for each employee - exempt or non-exempt (Attachment #1).
  2. New employees must sign the Understanding Concerning the Use of FLSA Compensatory Time (Attachment #3), which is included as part of the appointment packet.
  3. Managers must obtain accurate records of each exempt and non-exempt employee's daily and weekly hours worked. The time record shown in Attachment #2 should be used for this purpose. Employees should record on the back of their time record the reason for overtime. Certifications by the employee that the time record correctly reflects the hours worked and by the supervisor that the time record has been reviewed are required.
  4. The designated leave keeper will maintain the number of compensatory hours accrued by each employee for each month and the number of compensatory hours used by each employee for each month.

Attachments:

- #1 - Employee Work Week Schedule
- #2 - Employee Time and Leave Record
- #3 - Understanding Concerning the Use of FLSA Compensatory Time

Reference: Fair Labor Standards Act of 1938, as amended.