

Office of Human Resources
1001 Fair Labor Standards Act

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**Georgia Department of Human Services
Human Resources Policy #1001**

Fair Labor Standards Act

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References: 29 U.S.C. Chapter 8 — Fair Labor Standards Act
29 C.F.R. Part 516 et al. — Records to be Kept by Employers
O.C.G.A. 39-2-1 et al. — Regulation and Employment of Minors
O.C.G.A. 45-1-7 et al. — Paid Break Time for Nursing Mothers

All employees of the Department of Human Services (DHS) are covered by the Wage and Hour provisions of the Federal Fair Labor Standards Act (FLSA) unless specifically exempted. The provisions of FLSA include guidance for establishing work periods, payment of minimum wages, hours of work, overtime compensation and required record keeping.

Section A: Categories of Employees

1. Designations of exempt or non-exempt status are made by the DHS Office of Human Resources (OHR) based on criteria established by the FLSA. Such designations are made on an individual basis and are based on the actual work responsibilities assigned to each employee.
2. **Non-Exempt Employees**
 - a. Non-exempt employees are covered by the Wage and Hour provisions of FLSA. If a non-exempt employee works more than 40 hours in a work period, the employee is to receive time and a half FLSA compensatory time for overtime worked.
 - b. FLSA compensatory time is not granted to non-exempt employees who may have been in pay status for more than 40 hours during a work period due to a holiday or use of accrued leave, but who did not actually work more than 40 hours.
3. **FLSA Exempt Employees**
 - a. To qualify for exemption, effective July 1, 2024, employees must meet certain tests regarding their job duties and be paid on a salary basis of at least \$844/week (\$43,888/year). Effective January 1, 2025, employees must be paid on a salary basis of at least \$1,128/week (\$58,656/year), and meet certain tests regarding their job duties. Job titles do not determine exempt status.
 - b. FLSA exempt employees are not covered by the provisions of FLSA because their work assignments fall into one of the following categories:
 - I. Administrative
 - II. Computer

III. Executive

IV. Professional

4. Administrative Exemption

- a. All the following criteria must be met to qualify for the administrative employee exemption:
 - I. Effective July 1, 2024, the employee must be compensated on a salary basis of at least \$844/week (\$43,888/year). Effective January 1, 2025, the employee must be compensated on a salary basis of at least \$1,128/week (\$58,656/year).
 - II. The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and,
 - III. The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

5. Computer Exemption

- a. All the following criteria must be met to qualify for the computer employee exemption:
 - I. Effective July 1, 2024, the employee must be compensated on a salary basis of at least \$844/week (\$43,888/year). Effective January 1, 2025, the employee must be compensated on a salary basis of at least \$1,128/week (\$58,656/year).
 - II. The employee must be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.
 - III. The employee's primary duties must consist of one or more of the following:
 - 1. The application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications; and/or,
 - 2. The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on, and related to user or system design specifications; and/or
 - 3. The design, documentation, testing, creation, or modification of computer programs related to machine operating systems.

6. Executive Exemption

- a. All the following criteria must be met to qualify for the executive employee exemption:
 - I. Effective July 1, 2024, the employee must be compensated on a salary basis of at least \$844/week (\$43,888/year). Effective January 1, 2025, the employee must be compensated on a salary basis of at least \$1,128/week (\$58,656/year).
 - II. The employee's primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise.
 - III. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and,
 - IV. The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or the ability to modify another employee's work status must be given particular weight.

7. Professional Exemption

- a. All the following criteria must be met to qualify for the learned professional employee exemption:
 - I. Effective July 1, 2024, the employee must be compensated on a salary basis of at least \$844/week (\$43,888/year). Effective January 1, 2025, the employee must be compensated on a salary basis of at least \$1,128/week (\$58,656/year).
 - II. The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment.
 - III. The advanced knowledge must be in a field of science or learning; and,
 - IV. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

8. Creative Professional Exemption

- a. All the following criteria must be met to qualify for the creative professional exemption:
 - I. Effective July 1, 2024, the employee must be compensated on a salary basis of at least \$844 per week. Effective January 1, 2025, the employee must be compensated on a salary basis of at least \$1,128/week (\$58,656/year).
 - II. The employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

9. Highly Compensated Exemption

- a. Effective July 1, 2024, the total annual compensation for highly compensated employees performing office or non-manual work and paid total annual compensation of \$132,964 or more (which must include at least \$844 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption. Effective January 1, 2025, the total annual compensation for highly compensated employees will be \$151,164 or more (which must include at least \$1,128 per week paid on a salary or fee basis).

Section B: Work Period

1. The standard FLSA work period is a fixed period of seven (7) consecutive calendar days. It does not need to coincide with the calendar week and may begin on any day and at any time.
2. A work period must be established in writing for every employee (both exempt and non-exempt) and must be on file in an accessible location. The work period must define the time of day and day of the week when the employee's work period begins and ends. (Example: Friday at 5:00 p.m. to the following Friday at 5:00 p.m.)

NOTE Exempt employees are required to have a defined work period if they assume non-exempt duties for a period of time, which may make them eligible for FLSA overtime compensation.

3. An established work period may be changed if the change is intended to be permanent and not for the purpose of avoiding the accrual of FLSA overtime.
4. Employees in the same DHS organizational unit may have different work periods.

Section C: Time Worked

1. Time worked includes all time non-exempt employees are required to be on duty at prescribed workplaces, and all time during which non-exempt employees are suffered or permitted to work.
 - a. Non-exempt employees must be compensated for all time which supervisors know or have reason to know is being worked, not simply the time which non-exempt employees have been required or asked to work.
 - b. Supervisors are not to ignore work which non-exempt employees do on their own time. Non-exempt employees are required to report all time worked.
 - c. Non-exempt employees who work without authorization are subject to disciplinary action, up to and including separation.
2. Meal Periods - Although meal periods are not required by FLSA, it is the policy of DHS that meal periods be provided to employees unless there are specific work-related reasons for not allowing meal periods.
 - a. Meal periods are not considered work time if non-exempt employees do not perform any work-related duties for an uninterrupted period of at least 30 minutes.
 - b. Meal periods should be regularly scheduled based on non-exempt employees work assignments and the needs of the DHS organizational unit.
 - c. Non-exempt employees are not allowed to occupy their workstations during meal periods.
3. Break Periods - Short break periods are counted as time worked.
 - a. Break periods are not required by FLSA; however, up to two 15-minute break periods per day may be authorized at the discretion of supervisors, and if work assignments permit.
 - b. Supervisors may schedule break periods if determined appropriate within the DHS organizational unit.
 - c. Since break periods are work time, non-exempt employees are not authorized to lengthen a meal period, report late to work, or leave early by working through a break period.
 - d. Paid break time of a reasonable duration shall be provided to any employee who desires to express breast milk during work hours at the Agency's worksite. Employees should speak with their supervisors regarding the estimated amount of break time needed. Exempt employees shall not be required to use paid leave while taking a break for this purpose. Such break time is paid at the employee's regular rate of compensation.

NOTE

Employees shall not receive paid breaks on days the employee is working away from the Agency's worksite.

4. Meetings/Training - Time spent by non-exempt employees attending meetings, training and sim-

ilar activities must be counted as time worked, unless all the following criteria are met:

- a. The attendance is outside of non-exempt employees' regular working hours.
 - b. The attendance is voluntary.
 - c. The meeting, training or similar activity is not directly related to non-exempt employees' positions; and
 - d. Non-exempt employees perform no work related to their positions while in attendance.
5. On-call Non-exempt employees, who are not required to remain on the work premises and are free to engage in personal activities, subject only to the understanding that the supervisor knows how to reach them, are not working while on-call.
- a. All time which non-exempt employees spend performing work while on-call is time worked.
 - b. If actual calls are so frequent or the on-call conditions are so restrictive that non-exempt employees are not free to use the intervening periods effectively for personal benefit, the time must be considered time worked.
6. Travel - Normal travel from home to work and return is not work time. This is true whether the non-exempt employee has a fixed workplace or works at different locations.
- a. Travel to work assignments at sites within reasonable commuting distance of the non-exempt employee's primary work site is considered in the "home to work" category and is not work time. If, however, a non-exempt employee is required to stop by the primary work site for instructions or to pick up materials, the travel from the primary work site to the work assignment must be counted as time worked.
 - b. Travel between a non-exempt employee's normal work site and another place of assignment, or travel between one assignment and another during the workday, is considered time worked.
 - c. Travel associated with a one-day assignment at a different location must be considered time worked to the extent that the travel exceeds the time spent in the non-exempt employee's normal travel between home and work.
 - d. The FLSA does not require that travel time out-of-town for overnight stay as a passenger outside of normal work hours be counted as time worked. It is the policy of DHS to count bona fide travel time of non-exempt employees which include the driver and all passengers outside normal work hours as work time.
 - e. FLSA exempt employees are not entitled to any FLSA compensation for travel time either outside of, or in addition to, their normal hours of work.

NOTE

FLSA exempt employees may be allowed reasonable travel time if determined appropriate by supervisors.

Section D: Management of Work Hours

1. Supervisors are responsible for monitoring arrival and departure times of non-exempt employees to ensure accurate records are maintained and to minimize overtime worked.

2. Non-exempt employees are not allowed to occupy their workstations before their scheduled workday begins, during meal periods, and after their workday ends.
3. Non-exempt employees are required to accurately sign in and out (recording time to the exact minute) when they arrive and leave their work areas. Non-exempt employees who fail to correctly record actual work time are subject to disciplinary action up to and including separation.
4. Exempt employees generally do not complete time sheets to record work time. Since exempt employees are paid on a salary basis, time sheets should not be kept unless they are required to comply with programmatic certification requirements.
5. Time worked by non-exempt employees should be reviewed prior to the end of the work period (when possible) to determine if overtime may occur. Non-exempt employees' work schedules may be adjusted to prevent overtime work.
6. If a non-exempt employee arrives after the scheduled reporting time, the supervisor may allow the non-exempt employee to adjust the work schedule within the work period to make up the time if tardiness seldom occurs and the adjustment is otherwise determined appropriate. If frequent tardiness occurs, the non-exempt employee should not be allowed to make up the time. The non-exempt employee may be placed on unauthorized leave without pay, placed on an attendance plan, and disciplinary action may be taken.
7. Non-exempt employees must generally receive prior approval to work overtime. In unique or emergency situations, prior approval may not always be possible. Overtime worked in these instances must be reported to the supervisor as soon as possible. Non-exempt employees may be required to explain why overtime was necessary and why pre-approval was not possible. Whether authorized or not, all overtime work must be accurately and promptly recorded.
8. Overtime may be granted for emergencies, unanticipated assignments or for special projects which cannot be completed during normal work hours. Overtime should not generally be granted for non-exempt employees when work should be completed during the workday. Supervisors should closely monitor all overtime worked in these instances.
9. A statement regarding responsibility and accountability for managing the provisions of FLSA is to be included on Performance Management Plans (PMP) of supervisors who supervise non-exempt employees. These supervisors are to be evaluated on their PMF based on compliance with FLSA.
10. Non-exempt employees are to be evaluated on their PMF regarding adherence to FLSA requirements.
11. A method for monitoring all overtime worked should be put in place in every organizational unit.

Section E: Overtime

1. If overtime occurs (non-exempt employee works, more than 40 hours in a work period) the non-exempt employee is to receive time and a half FLSA compensatory time for the amount of overtime worked. (See exception for non-exempt fire protection and law enforcement employees in item #3 of this Section.)

NOTE FLSA compensatory time is not granted to non-exempt employees who may

have been in pay status for more than 40 hours during a work period due to a holiday or use of accrued leave, but who did not actually WORK more than 40 hours. (See Policy #1006: Absence from Work)

2. FLSA exempt employees are NOT entitled to FLSA compensatory time for time worked over 40 hours in a work period. In unusual circumstances when an exempt employee is required to work an extraordinary number of hours, the manager may grant some time off within a reasonable period. Time off for exempt employees, however, should not be on an hour for hour basis.

NOTE

In unique or critical circumstances, straight time overtime may be paid to FLSA exempt employees. Specific approval must be received from the Governor's Office of Planning and Budget, DHS Office of Planning and Budget Services and the OHR prior to payment for overtime work. Amount of overtime worked must be reported to the appropriate transactions center for processing payment. Records of time worked must be maintained by the DHS organizational unit.

3. The actual amount of FLSA compensatory time earned by non-exempt employees (i.e., not rounded off) and usage of FLSA compensatory time must be reported through the system in the manner that other leave is accrued and used.
4. Non-exempt employees may accrue up to a maximum of 240 hours of FLSA compensatory time (160 overtime hours worked x 12 = 240 hours of compensatory time).
5. Non-exempt employees must receive overtime payment for FLSA compensatory time accrued more than the maximum described in paragraph above.

Section F: Compensatory Time Use and Payment

1. Non-exempt employees 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 DHS organizational unit.
2. Supervisors must require non-exempt employees to take FLSA compensatory time in lieu of annual leave. Non-exempt employees may request FLSA compensatory time in lieu of sick leave or personal leave.
3. FLSA compensatory time cannot be transferred between State agencies or different DHS organizational units (e.g., from a Division of Aging Services organizational unit to a Division of Child Support Services organizational unit). Transfer of FLSA compensatory time is allowed within the same organizational unit within DHS (e.g., same OFSS Facility, same County DFCS office). Payment for FLSA compensatory time must be made by the losing DHS organizational unit at the time a non-exempt employee transfers to another organizational unit within DHS or to another state agency.
4. Non-exempt employees must be paid for accrued and unused FLSA compensatory time at the higher of the following rates:

- a. The average regular rate received by the non-exempt employee during the last three (3) years of employment; or
 - b. The final regular rate received by the non-exempt employee.
5. Monetary payment of overtime to non-exempt employees will be made only in unique or critical circumstances and must have prior approval from the Governor's Office of Planning and Budget, DHS Office of Planning and Budget Services and the OHR.
 - a. Overtime payments are calculated on an hourly rate by adding the non-exempt employee's annual salary and supplemental pay, (i.e., shift differential, county supplement, etc.) and dividing the sum by 2,080 hours.
 - b. Overtime payment is calculated on the rate in effect when the overtime was earned.

Section G: Child Labor Laws

1. In accordance with Federal and State Laws, selected applicants under the age of 18 are required to submit an employment certificate to the hiring official prior to being employed by DHS. Employment certificates are issued by County Boards of Education or private schools, whichever is applicable.
2. The type of work that may be performed by employees under the age of 18 is restricted by Federal and State Laws. Decisions regarding the provisions of the child labor laws will be made on a case-by-case basis.
3. Failure to comply with child labor laws may result in the Department being fined up to \$10,000.00.
4. The Office of Human Resource or appropriate transactions center must be contacted prior to hiring applicants under the age of 18.

Section H: Recordkeeping

All FLSA records must be kept for at least three (3) years by the DHS organizational unit unless otherwise directed. These records include, but are not limited to:

1. UNDERSTANDING CONCERNING FLSA COMPENSATORY TIME Forms (Attachment #3) signed by all new employees.
2. Written records of employees work periods.
3. Records of each non-exempt employee's daily and weekly time worked approved by the employee and supervisor.
4. The amount of FLSA compensatory time accrued by each non-exempt employee during each work period.
5. The amount of FLSA compensatory time used in each work period by each non-exempt employee; and,
6. The amount paid for FLSA compensatory time and the basis of payment.

For additional information or assistance, please contact your designated Human Resources Repre-

sentative.