

### Sample Policy Statements

The following sample policy statements can be utilized as a starting point for employers to easily customize as part of their employee manual for their company. The policies can be customized by adding information specific to the company, such as a time keeping policy, workplace hours, etc. Suggestions and examples are included to give additional information and help determine the company's policies.

- The comments in **[brackets]** are prompts for employers to customize the Employee Manual for their company. As the company's information is inserted, the brackets should be deleted.
- The italicized comments in *(parentheses)* are instructions for employers while customizing the document. The italicized comments and parentheses should be deleted before distributing the Manual to employees.

### **Sample 1**

#### **DEFINITIONS OF EMPLOYEES STATUS**

##### **"EMPLOYEES" DEFINED**

An "employee" of [Company Name] is a person who regularly works for [Company Name] on a wage or salary basis. "Employees" may include exempt, non-exempt, regular full-time, regular part-time, and temporary persons, and others employed with the Company who are subject to the control and direction of [Company Name] in the performance of their duties.

##### **EXEMPT**

*(Note: See a more in-depth discussion about exempt employees in Chapter 3 of this manual.)*

Employees whose positions meet specific criteria established by the Fair Labor Standards Act (FLSA) and who are exempt from overtime pay requirements.

##### **NON-EXEMPT**

Employees whose positions do not meet FLSA criteria and who are paid one and one-half their regular rate of pay for hours worked in excess of 40 hours per week.

##### **REGULAR FULL-TIME**

*(A 90-day probationary period is recommended for new employees. Your health insurance provider's plan usually specifies the number of hours per week an employee must work in order to be given full-time status. In most cases, 35 hours per week is considered full-time employment. Check with your insurance provider to be sure.)*

Employees who have completed the [90-day] probationary period and who are regularly scheduled to work [35] or more hours per week, generally are eligible for the Company's benefit package, subject to the terms, conditions, and limitations of each benefit program.

#### **REGULAR PART-TIME**

Employees who have completed the [90-day] probationary period and who are regularly scheduled to work less than [35] hours per week. [Regular part-time employees are eligible for some benefits sponsored by the Company, subject to the terms, conditions, and limitations of each benefit program.]

#### **TEMPORARY (FULL-TIME or PART-TIME)**

Those whose performance is being evaluated to determine whether further employment in a specific position or with the Company is appropriate or individuals who are hired as interim replacements to assist in the completion of a specific project or for vacation relief. Employment beyond any initially stated period does not in any way imply a change in employment status. Temporary employees retain that status until they are notified of a change. They are not eligible for any of the Company's benefit programs.

#### **PROBATIONARY PERIOD FOR NEW EMPLOYEES**

A new employee whose performance is being evaluated to determine whether further employment in a specific position or with [Company Name] is appropriate. When an employee completes the probationary period, the employee will be notified of his/her new status with [Company Name].

#### **OFFICE HOURS**

[Company Name] office is open for business from [XX a.m. to XX p.m. Day of Week through Day of Week], except for Holidays.

The standard workweek is [40] hours of work. In the computation of various employee benefits, the employee workweek is considered to begin on [Sunday (starting at 12:01 a.m.) through Saturday (ending at 12:00 a.m.)], unless a supervisor makes prior other arrangement with the employee.

#### **ATTENDANCE/PUNCTUALITY**

The Company expects that every employee will be regular and punctual in attendance. This means being in the office, ready to work, at their starting time each day. Absenteeism and tardiness places a burden on other employees and on the Company.

If you are unable to report for work for any reason, notify your supervisor before regular starting time. You are responsible for speaking directly with your supervisor about your absence. It is not acceptable to leave a message on a supervisor's voice mail, except in extreme

emergencies. In the case of leaving a voice-mail message, a follow-up call must be made later that day. The company phone number is [(XXX) XXX-XXXX].

Should undue tardiness become apparent, disciplinary action may be required.

If there comes a time when you see that you will need to work some hours other than those that make up your usual work week, notify your supervisor at least [seven working days] in advance. Each request for special work hours will be considered separately, in light of the employee's needs and the needs of the Company. Such requests may or may not be granted.

### **WAGE OR SALARY INCREASES**

[Each employee's hourly wage or annual salary will be reviewed at least once each year. The employee's review date will usually be conducted on or about the anniversary date of employment or the date of the previous compensation review. Such reviews may be conducted more frequently for a newly created position, or based on a recent promotion.]

[Increases will be determined on the basis of performance, adherence to company policies and procedures, and ability to meet or exceed duties per job description and achieve performance goals.]

Although the Company's salary ranges and hourly wage schedules will be adjusted on an ongoing basis, [Company Name] does not grant "cost of living" increases. Performance is the key to wage increases in the Company.

### **TIMEKEEPING**

(If you use a time clock, include the following.)

Accurately recording time worked is the responsibility of every non-exempt employee. Time worked is the time actually spent on a job(s) performing assigned duties. [Each client job is assigned a job number as posted in the Employee Message Center. Employees are responsible for accurately documenting their time spent on individual jobs.]

[Company Name] does not pay for extended breaks or time spent on personal matters.

The time clock is a legal instrument. Altering, falsifying, tampering with time records, or recording time on another team member's time record will result in disciplinary action, including termination of employment.

Authorized personnel will review time records each week. Any changes to an employee's time record must be approved by his/her supervisor [or appropriate person]. Questions regarding the timekeeping system or time cards should be directed to the [appropriate person].

**Time Cards** – Non-exempt employees will be issued a time card on their first day of employment. The employee will be given thorough instructions on usage and instructions on what to do should a problem occur.

[Employees will be financially responsible for replacing the card if it is lost or stolen.  
Replacement cards are \$X.XX.]

## **PAYDAYS**

All employees are paid [insert appropriate time period here, i.e., weekly, monthly, etc.]. In the event that a regularly scheduled payday falls on a weekend or holiday, employees will receive pay [on the next day of operation].

If a regular payday falls during an employee's vacation, the employee's paycheck will be available upon his/her return from vacation.

[If the employee is not at work when paychecks are distributed and does not receive the paycheck, the paycheck will be kept at the reception desk through the rest of the payday. If an employee is unable to pick up his or her check on payday, he or she will need to see the company Bookkeeper or Human Resources Representative].

Paychecks will not, under any circumstances, be given to any person other than the employee without written authorization. Paychecks may also be mailed to the employee's address or deposited directly into an employee's bank account upon request.

## **Sample 2**

### **ADMINISTRATIVE POLICY DISCLAIMER**

This policy is based on the opinions of the Department of Labor on the subject of Wages and Hours Worked. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

**"Hours worked"** means all hours during which the employee is authorized or required, known or reasonably believed by the employer to be on duty on the employer's premises or at a prescribed work place. This may include all work requested, suffered, permitted or allowed and includes travel time, training and meeting time, wait time, on-call time, preparatory and concluding time, and may include meal periods. "Hours worked" includes all time worked regardless of whether it is a full hour or less. "Hours worked" includes, for example, a situation where an employee may voluntarily continue to work at the end of the shift. The employee may desire to finish an assigned task or may wish to correct errors, prepare time reports or other records. The reason or pay basis is immaterial. If the employer knows or has reason to believe that the employee is continuing to work, such time is working time.

**An employer may not avoid or negate payment of regular or overtime wages by issuing a rule or policy that such time will not be paid or must be approved in advance. If the work is performed, it must be paid. It is the employer's responsibility to ensure that employees do not perform work that the employer does not want performed.**

**Time spent driving in a company-provided vehicle**

Whether travel or commute time is compensable depends on the specific facts and circumstances of each individual employee and work week. If the travel or commute time is considered "hours worked," then it is compensable and the employee will be paid for this time. These statutory and regulatory requirements cannot be waived through a collective bargaining agreement or other agreement.

"Hours worked" means all hours when an employee is authorized or required to be on duty on the employer's premises or at a prescribed workplace.

There are three elements to the definition of hours worked:

- 1- An employee is authorized or required by the employer
- 2- to be on duty
- 3- on the employer's premises or at a prescribed workplace

If any of the three elements is not satisfied, then the time spent driving in a company-provided vehicle is not considered "hours worked." The specific factors used to establish the "authorized or required" element are not listed in this policy. However, the element must be met for "hours worked" under the law.

Time spent driving a company-provided vehicle during an employee's ordinary travel, when the employee is not on duty and performs no work while driving between home and the first or last job site of the day, is not considered hours worked.

Time spent driving a company-provided vehicle from the place of business to the job site is considered hours worked. Time spent riding in a company-provided vehicle from the place of business to the job site is not considered hours worked when an employee voluntarily reports to the location merely to obtain a ride as a passenger for the employee's convenience, is not on duty, and performs no work. Time spent driving or riding as a passenger from job site to job site is considered hours worked.

**Factors that will be considered in determining IF AN EMPLOYEE IS "on duty" when driving a company-provided vehicle between home and work.**

To determine if the employee is on duty, you must evaluate the extent to which the employee's personal activities are restricted and controls the employee's time. This includes an analysis of the frequency and extent of such restrictions and control. Following is a non-exclusive list of factors to consider when making a determination if an employee is "on duty." There may be additional relevant factors that are not included in this policy. All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.

1. The extent to which the employee is free to make personal stops and engage in personal activities during the drive time between home and the first or last job site of the day, or whether the vehicle may only be used for company business.
2. The extent to which the employee is required to respond to work related calls or to be redirected while en route.
3. Whether the employee is required to maintain contact with their supervisor.
4. The extent to which the employee receives assignments at home and must spend time writing down the assignments and mapping the route to reach the first job site before beginning the drive.

**Factors that will be considered in determining if an employee is “on the employer’s premises or at a prescribed work place” when driving a company-provided vehicle between home and work.**

To determine if a company-provided vehicle constitutes a “prescribed work place,” the Company will evaluate whether driving the particular vehicle is an integral part of the work performed by the employee. Following is a non-exclusive list of factors to consider when making a determination if an employee is “on the employer’s premises or at a prescribed work place.” There may be additional relevant factors not listed in this policy. All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.

1. Whether the nature of the business requires the employee to drive a particular vehicle provided by the employer to carry necessary non-personal tools and equipment to the work site.
2. The extent to which the company-provided vehicle serves as a location where the Company authorizes or requires the employee to complete business required paperwork or load materials or equipment.
3. The extent to which the Company requires the employee to ensure that the vehicle is kept clean, organized, safe, and serviced.

**The following are two examples of how this policy may be used to determine whether or not drive time between home and the first or last job site of the day in a company-provided vehicle is compensable. These examples are illustrative and are not intended to create additional factors or address other scenarios where the facts differ from those below.**

**COMPENSABLE EXAMPLE:**

1. In this example, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is compensable. For purposes of this example, all of the following facts are present. The employee drives between home and the first or last job site of the day in a company-provided vehicle:

- As a matter of accepted company practice, the employee is prohibited from any personal use of the vehicle, which must be used exclusively for business purposes; and
- The Company regularly requires the employee to perform services for the employer during the drive time including being redirected to a different location; and
- The employee regularly transports necessary non-personal tools and equipment in the vehicle between home and the first or last job site of the day; and
- The employee receives his/her daily job site assignments at home in a manner that requires the employee to spend more than a de minimis amount of time writing down the assignments and mapping travel routes for driving to the locations.

**NON COMPENSABLE EXAMPLE:**

2. In this example, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is not compensable. For purposes of this example, all of the following facts are present. The employee drives between home and the first or last job site of the day in a company-provided vehicle:

- The Company does not strictly control the employee's ability to use the vehicle for personal purposes. E.g., the employee, as a matter of accepted company practice, is able to use the vehicle for personal stops or errands while driving between home and the job site; and
- The employee is not required to perform any services for the Company during the drive including responding to work related calls or redirection; and
- The employee does not perform any services for the Company during the drive including work related calls or redirection.

**Training and meeting time as "hours worked"**

Training and meeting time is generally interpreted to mean all time spent by employees attending lectures, meetings, employee trial periods and similar activities required by the employer, or required by state regulations, and shall be considered hours worked.

Time spent by employees in these activities will *not* be counted as hours worked if all of the following tests are met:

- Attendance is voluntary; and
- The employee performs no productive work during the meeting or lecture; and
- The meeting takes place outside of regular working hours; and

The meeting or lecture is not directly related to the employee's current work, as distinguished from teaching the employee another job or a new, or additional, skill outside of skills necessary to perform job.

If the employee is given to understand, or led to believe, that the present working conditions or the continuance of the employee's employment, would be adversely affected by non-attendance, time spent shall be considered hours worked.

Time spent in training programs mandated by state or federal regulation, but *not* by the Company, will not be paid if the first three provisions are met; that is, if attendance is voluntary, the employee performs no productive work during the training time, and the training takes place outside of normal working hours.

Where the Company (or someone acting on the Company's behalf), either directly or indirectly, requires an employee to undergo training, the time spent is clearly compensable. The Company in such circumstances has controlled the employee's time and must pay for it. However, where the state has required the training and such state-required training is of a general applicability, and not tailored to meet the particular needs of the Company, the time spent in such training would not be compensable.

When state or federal regulations require a certificate or license of the employee for the position held, time spent in training to obtain the certificate or license, or certain continuous education requirements, will not be considered hours worked. The cost of maintaining the certificate or license may be borne by the employee.

#### **"Waiting time"**

In certain circumstances employees report for work but due to lack of customers or production, the Company may require them to wait on the premises until there is sufficient work to be performed. "Waiting time" is all time that employees are required or authorized to report at a designated time and to remain on the premises or at a designated work site until they may begin their shift. During this time, the employees are considered to be engaged to wait, and all hours will be considered hours worked.

When a shutdown or other work stoppage occurs due to technical problems, such time spent waiting to return to work will be considered hours worked *unless* the employees are completely relieved from duty and can use the time effectively for their own purposes. For example, if employees are told in advance they may leave the job and do not have to commence work until a certain specified time, such time will not be considered hours worked. If the employees are told they must "stand by" until work commences, such time will be paid.

#### **"Show up" pay**

The Company is not required by law to give advance notice to change an employee's shift or to shorten it or lengthen it, thus there is no legal requirement for show-up pay. That is, when employees report to work for their regularly scheduled shift but the Company has no work to be performed, and the employees are released to leave the Company's premises or designated work site, the Company is not required to pay wages if no work has been performed.



### **“On-call” time**

Whether or not employees are "working" during on-call depends upon whether they are required to remain on or so close to the Company's premises that they cannot use the time effectively for their own purposes.

Employees who are not required to remain on the Company's premises but are merely required to leave word with Company officials or at their homes as to where they may be reached are not working while on-call. If the Company places restrictions on where and when the employee may travel while “on call,” this may change the character of that “on call” status to being engaged in the performance of active duty. The particular facts must be evaluated on a case-by-case basis.

### **Preparatory and concluding activities**

Preparatory and concluding activities are those activities that are considered integral or necessary to the performance of the job. Those duties performed in readiness and/or completion of the job shall be considered hours worked. When an employee does not have control over when and where such activities can be made, such activities shall be considered as hours worked.

Examples may include the following:

- Employees who cannot perform their principal activities without putting on certain personal protective equipment (PPE), or changing clothes, on the Company's premises at the beginning and end of the workday.
- Counting money in the till (cash register) before and after the shift, and other related paperwork.
- Preparation of equipment for the day's operation, i.e., greasing, fueling, warming up vehicles; cleaning vehicles or equipment; loading, and similar activities.

### **Sample 3**

#### **Hours of Duty and Work Schedule Company Policy**

A **basic workweek** is the officially prescribed days and hours during which a full-time employee is entitled to basic pay. The basic work week for all full-time employees in the Company is 8:30 a.m. to 5:00 p.m., Monday through Friday, including a daily non-compensable lunch period of 30 minutes. Variations from the basic workweek may be authorized by the head of an operating unit or an official to whom personnel management authority is delegated. A basic workweek may not extend over more than six of any seven consecutive days.

A **regularly scheduled administrative workweek** is the period an employee is regularly scheduled to work within an administrative workweek (i.e., a period of seven consecutive 24-hour periods designated in advance). For a full-time employee, it consists of the 40-hour basic workweek plus any periods of regularly scheduled overtime work. For a part-time employee, it

means the officially prescribed days and hours during which the employee is regularly scheduled to work.

An employee's shift is the hours of a day (a daily shift) and the days of an administrative workweek (a weekly shift) that constitute an employee's regularly scheduled administrative workweek.

An employee's shift is to be scheduled so it corresponds with the employee's actual work requirements and ensures that functions are adequately staffed during office or company operating hours.

**Scheduling Considerations.** A regularly scheduled administrative workweek must be established for every full-time employee unless the employee works a first 40-shift, is paid annual premium pay for standby duty, works a flexible or compressed work schedule, or is intermittent.

When an assignment to a new shift is necessary, an employee must be given as much advance notice as possible. Unless there is a bargaining unit agreement that states otherwise, it is standard practice that schedules be established by 6 p.m. Friday of the week prior to the one in which the time will be worked. A schedule may need to be established earlier depending on the hour a majority of the employees depart the workplace. Absent a bargaining unit agreement, published policy, posted schedule or notification that says otherwise, an employee's schedule is deemed set for the following week at that time.

### **Special Shifts**

**Part-time Employment.** Part-time schedules may be established when the workload will not support full-time employment or when an employee asks to work part-time and the request can be accommodated. A permanent part-time employee may not work less than 16 hours or more than 32 hours in a week. Temporary part-time employees are not held to these limitations.

Part-time employment may be scheduled in quarter-hour increments, e.g., Monday 9:15 a.m. to 3:00 p.m., in departments that charge leave in quarter-hour increments, however, the end result may not be a biweekly shift with fractions (e.g., 17 ½ hours, etc.). Otherwise, part-time schedules must be established in whole hours.

When a part-time employee's schedule changes to full-time for more than two consecutive pay periods, the change must be documented to ensure the employee's leave, service credit and benefits are appropriately applied.

**Intermittent Employment.** Intermittent work schedules may be established when the work of a less than full-time position is so sporadic and unpredictable that a shift cannot be scheduled in advance. The hours when the employee's services are required constitute the hours of their shift.

When the work of an intermittent employee becomes regularly scheduled in nature, i.e., for more than two consecutive pay periods, the employee's schedule must be changed for the same reasons outlined above under part-time employment.

**Mixed Shifts.** Because of changing workloads, employees may be scheduled to a mixed shift which includes periods of full-time, part-time, and intermittent or furlough employment. Employees who are hired to work a mixed shift as a condition of employment are exempt from the 16- to 32-hour-per-week part-time employment restriction.

**First 40 Hours Shift.** When the work situation is such that it is impossible to schedule the hours or days of a regularly scheduled administrative work-week, but employees will perform at least 40 hours of work in an administrative work-week, the employee may be assigned to a shift which consists of the first 40 hours of work performed over not more than 6 days of the administrative workweek. This situation is not limited to -- but is not uncommon in -- scientific and engineering environments.

### **Changing a Shift**

Assignments to shifts must be scheduled in advance of the administrative workweek over periods of not less than one week. A regularly scheduled administrative workweek must be rescheduled whenever it is known in advance that based on work requirements the specific days and hours of a day actually required of an employee will differ from those required in the current administrative workweek. The employee shall be informed of the change and the change must be recorded on the employee's time and attendance report.

An employee's shift may not be changed solely to avoid paying premium pay to which the employee would otherwise be entitled or to avoid the costs incurred because of a holiday, absence for military or court leave, absence resulting from an on-the-job injury, or absence in connection with funerals of immediate relatives in the armed forces.

Rescheduling could be required for such purposes as to permit an employee's attendance in a training class (as described below) or conference, when an employee under an Alternative Work Schedule (AWS) is in travel status at a location not under an AWS, or to substitute for an absent employee's shift.

**Rescheduling for Educational Purposes.** A special shift may be authorized to permit an employee to take one or more courses at college, university, or other educational institution. In this situation, the courses cannot be training under the Government Employees' Training Act; the rescheduling will not prevent the employee from accomplishing required work; additional costs for personal services will not be incurred; and completion of the courses will equip the employee for more effective work in the Company.

Varied work hours under this heading must be requested by the employee in writing.

### **Scheduling Travel**

Employee travel should be scheduled to take place during regular working hours to the extent possible. However, an employee may be required to travel on personal time, e.g., after normal working hours, on weekends or a holiday. A supervisor who requires an employee to perform travel on personal time, when such travel is not compensable by premium pay must, if the employee requests it, provide reasons in writing for ordering the employee to travel during

those hours. A copy of the statement must be retained with the employee's time and attendance report.

### **Scheduling Lunch Periods**

Any workday of five hours or more includes a 30-minute non-compensable lunch period. This may be extended to one hour if the workday is correspondingly extended.

An employee may not work through the lunch period in order to extend paid time or to otherwise modify his or her established schedule.

### **Scheduling Breaks**

Compensable rest periods during the workday may be authorized for health and safety or efficiency reasons. Rest periods must not exceed 15 minutes during each four-hour period of work. They must not be scheduled immediately before or after lunch periods or at the start or end of a workday. Employees are generally not authorized to leave the work place during rest periods because they are in pay status.

### **Scheduling Preparation and Clean Up Time**

A reasonable amount of the scheduled workday may be set aside for preparation and clean-up activities. If this kind of activity cannot be included in an employee's scheduled work-day, up to 30 minutes overtime may be authorized.

### **Daylight Savings Time**

An employee working on a shift when daylight savings time goes into effect will be credited with the actual number of hours worked on that shift. If an employee is not permitted to work an additional hour, the hour lost in the change to daylight savings time will be charged to annual leave, accrued compensatory time, accrued credit hours, if on a flexible alternative work schedule, or leave without pay (LWOP) as appropriate. An employee working on shift upon return to standard time is credited for the actual number of hours worked on that shift.

## Sample Policy Statements

### **Sample 1**

#### **Overtime Policy**

[Company Name] is open for business [XX] hours per week. Overtime compensation is paid to non-exempt employees in accordance with federal and state wage and hour restrictions. Overtime is payable for all hours worked over [40] per week at a rate of one and one-half times the non-exempt employee's regular hourly rate. Time off on personal time, holidays, or any leave of absence will not be considered hours worked when calculating overtime. In addition, vacation time does not constitute hours worked.

All overtime work performed by an hourly employee must receive the [supervisor's] prior authorization. Overtime worked without prior authorization from the [supervisor] may result in disciplinary action. [The supervisor's] signature on a timesheet authorizes pay for overtime hours worked.

### **Sample 2**

**1. Employees are generally entitled to overtime compensation for hours worked in excess of forty per week.** Unless an employee is exempt from the Minimum Wage Act or from overtime requirements, he or she must be compensated at an overtime rate of at least at one and one-half times his or her regular rate of pay for all hours in excess of forty in a seven-day workweek. Overtime pay is required regardless of whether the employee is paid hourly or in some other manner, (commission, piecework, salary, non-discretionary bonus, etc., combinations thereof, or an alternative pay structure combined with an hourly rate) or whether payment is made on a daily, weekly bi-weekly, semi-monthly, monthly or other basis.

There is no limitation on the number of hours an employee may work in a workweek. An employer can require mandatory overtime but must compensate the employee accordingly. Overtime compensation is due when an employee works more than 40 hours in a workweek, regardless of whether the hours are worked on a Saturday, Sunday or holiday. The overtime requirement may not be waived by agreement between an employee and employer. A declaration by an employer that no overtime work will be permitted, or that overtime work will not be paid unless authorized in advance, is not a defense to an employee's right to compensation for any overtime hours actually worked. The right to overtime compensation cannot be waived by individual employee agreement or by collective bargaining agreement.

**2. If an employee must be paid overtime, how is the amount due calculated?**

If an employee is due overtime compensation for hours over 40 in a workweek, it must be paid at a rate "not less than one and one-half times the regular rate at which he [or she] is employed."

- **Employees paid a single hourly rate.** Employees who are paid a single, hourly rate must be paid at least one and one-half their regular hourly rate of pay for each hour worked in excess of 40 in a seven-day workweek.

- **Employees paid other than at a single hourly rate.** For example, non-exempt salaried employees, piece rate, commission, non-discretionary bonus, and combinations of the above, including one or more of the above combined with an hourly rate, are also entitled to overtime pay at a rate of at least one and one-half the "regular rate" at which they are employed.

#### **Examples of Regular Rate In Various Situations:**

- **Hourly rate.** When an employee is paid solely on the basis of a single hourly rate, the hourly rate is the "regular rate." For overtime hours, the employee must be paid one and one-half times the hourly rate for each hour over 40 in the workweek.

- **Piece rate.** When an employee is paid on a piece rate basis, the regular rate of pay is computed by adding together the total earnings for the workweek from piece rate and all other earnings (such as bonuses), and any sums that may be paid for other hours worked. This sum is divided by the total number of hours worked in that week to yield the pieceworker's "regular rate" for that week. For the overtime work, the employee is owed, in addition to the total straight-time weekly earnings, one-half the regular rate for each hour over 40 in the workweek. The employee has already received straight-time compensation for all hours worked and only additional half-time pay is required.

- **Day rates/job rates.** An employee may be paid a flat sum for a day's work, or for doing a particular job, without regard to the number of hours worked in the day or at the job, and receive no other form of compensation. In such a case, the employee's "regular rate" is found by totaling all the sums received at such day rates or job rates in the work week and divided by the total hours actually worked. The employee must be paid an additional one-half pay at this rate for each hour over 40 in the workweek. The employee has already received straight-time compensation for all hours worked and only the additional half-time pay is required.

- **Payment of salary.** Salary payment arrangements must include a mutually understood agreement between employer and employee specifying the number of hours per week for which the salary is intended to cover. In the absence of a clear understanding of the number of hours to be included in the weekly salary, the department will consider the salary agreement to be based on 40 hours.

- **Salary—weekly.** When an employee is employed solely on a weekly salary basis, the regular hourly rate of pay is computed by dividing the salary by the number of hours for which the salary is intended to compensate.

- **Salary—other than weekly.** When the salary covers a period longer than a workweek, such as a month, it must be reduced to its equivalent weekly wage by multiplying by 12 (months), and dividing by 52 (weeks). A semi-monthly salary is converted to its weekly equivalent by multiplying by 24 and dividing by 52. Overtime payment for salary paid other than weekly is determined the same as for weekly payment of salary.

- **Salary—workweek exceeding 40 hours.** A fixed salary for a regular workweek longer than 40 hours does not discharge the statutory obligation for nonexempt employees. For example, an employee may be hired to work a 44-hour workweek for a weekly salary of \$350. In this case, the regular rate is obtained by dividing the \$350 straight-time salary by 44 hours, which results

in a regular rate of pay of \$7.95. The employee is due additional overtime computed by multiplying the four overtime hours by *one-half* the regular rate of pay at \$3.98 per hour, and the employee is due an additional \$15.92 above the \$350 salary for each week, for a total of \$365.92. If the employee worked more than 44 hours, the employee would be due additional pay for the hours worked over 44 computed by multiplying these additional overtime hours by *one and one-half* the regular rate of pay (\$7.95), or \$11.93 per hour for each hour worked in excess of 44 in any workweek.

- **Salary—fluctuating hours.** Salary for a fluctuating workweek occurs when an employee is employed on a fixed salary and it is clearly understood and agreed upon by both employer and employee that the hours will fluctuate from week to week and that the fixed salary constitutes straight-time pay for all hours of work, whether fewer or greater than forty hours per week. The regular rate is then obtained for each week by dividing the weekly salary by the number of hours worked each week. Since it was understood that all hours would constitute straight-time, all hours worked have already been paid at straight-time compensation; however, the employee is still entitled to receive an additional one-half hour's pay for each hour over 40 in the work week.

- **Employees working at two or more rates.** Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. The employee is due the one-half rate for each overtime hour.

- **Commission payments (other than retail sales or service exception).** Commissions are payments for hours worked and must be included in the regular rate, regardless of whether the commission is the sole source of the employee's compensation or is paid in addition to a salary or hourly rate. It does not matter whether the commission earnings are computed daily, weekly or monthly.

When a commission is paid on a workweek basis, it is added to the employee's other earnings for that workweek and the total is divided by the number of hours worked in the workweek to obtain the employee's regular rate for the particular work week. The employee must then be paid extra compensation at the one-half rate for each overtime hour worked.

**Note: In all of the above examples, if the regular rate should fall below the applicable minimum wage, the employee must be compensated for regular hours at the minimum wage and for overtime based on one and one-half the minimum wage rate.**

### 3. What is the definition of “workweek”?

A workweek is a fixed and regularly recurring period of 168 hours during seven consecutive 24-hour periods. It may begin on any day of the week and any hour of the day. For purposes of overtime payment, each workweek stands alone; there can be no averaging of two or more workweeks. Once the beginning time of an employee's workweek is established it remains fixed, but may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements. In the absence of a workweek established by the employer, the workweek automatically defaults to the calendar week, Sunday through Saturday.

### Sample 3

#### **Attendance Policy – Overtime Work Schedule**

**POLICY** Any classification having a Fair Labor Standards Act (FLSA) Exempt position may not be paid overtime without the approval of Human Resources. HR will contact the employee's direct supervisor for approval. Such approval must be received before any overtime may be worked. The Company will not retroactively approve overtime.

#### **GENERAL INFORMATION**

##### **Contract Covered Employees**

For notification, scheduling, and distribution requirements see applicable collective bargaining agreement.

##### **Non-Contract Employees Covered**

To the extent that sufficient notice is available and the best interests of the Company are served, required overtime shall be distributed as equally as practical among the employees of the work unit at the same classification who normally perform the assigned duties. An employee who declines overtime work shall be counted as having worked in determining this "equal-share."

##### **Compensatory Time**

Payment for overtime worked may be made in compensatory time rather than in dollars if mutually agreed upon between the employee and his/her supervisor. For union employees, see applicable collective bargaining agreement.

**Note:** Employees are not eligible to receive overtime compensation in either cash or compensatory time credit until they have completed 40 (forty) hours in a week.

#### **HOURLY EMPLOYEES**

**Policy.** Prior management approval is required before a supervisor can authorize overtime either explicitly or implicitly.

**Work Scheduling.** The daily or biweekly work schedule of the hourly employee shall not be altered on a temporary basis to avoid premium overtime. The schedule shall be posted or the employee officially notified of his work schedule not less than 48 hours prior to the beginning of the new biweekly work period.

Supervisors should, when appropriate, adjust staff work schedules prior to the end of the week to avoid the accrual of more than 40 hours. Callback time can not be adjusted.

With the approval of the employer, the employee may, upon request, have the eight hour daily overtime provision waived and have a work schedule adjustment within the week in lieu of an accumulation of overtime. For union employees see the appropriate collective bargaining agreement.



### **Overtime Provisions**

1. Overtime payments shall be made to hourly employees for time worked in excess of regularly scheduled hours in a day or in excess of 40 hours in a weekly work period.
2. Overtime pay is paid to eligible employees for time in pay status, excluding sick leave, in excess of 8 hours in a day and 40 hours in a week or as otherwise provided in the regulations. Holiday credit is to be counted as work time in computing weekly overtime only. If an employee works on a holiday, premium payment for the first 8 hours worked on the holiday is due and payable only when 40 hours in a week are exceeded. The employee has the option, with supervisory approval, to take another day in the same period as the holiday.
3. Part-time employees are eligible for premium overtime after completion of 8 hours in a day, not after completing their regular shift if less than 8 hours.
4. A day is defined as having 24 hours. A day begins at 12:01 a.m.
5. A biweekly work period consists of 80 hours of work, unless otherwise provided. A biweekly work period is considered complete if the actual time worked, plus any paid administrative, annual, deferred, sick, school, military or holiday leave, equals or exceeds 80 hours. The premium for overtime hours worked shall not be counted as work time.

### **Rate/Method of Payment**

Payment will be made at one and one-half times the employee's regular rate. Payment shall be included in the biweekly payroll warrant.

### **SALARIED EMPLOYEES**

**Policy.** Salaried employees are expected to do what is necessary to get a job done. They can be required to put in extra time without additional pay and also can be permitted time away from the job without use of leave credits or assessment of lost time. Records of specific hours are not normally maintained.

**Exception:** In unusual circumstances, a more structured approach may be desirable. For example, an employee may be required to be present at a given time beyond the employee's normal work schedule in order to supervise the work of subordinates; a situation in which the employee has little or no control over the amount of time to be worked. If mutually agreed in advance between the employee and the supervisor, the employee may be authorized **"equivalent time."**

**Equivalent Time.** "Equivalent Time" hours are accumulated on an hour for hour basis. This is different than "Compensatory Time" which is an hour and a half of leave time for an hour worked. "Equivalent Time" hours may be recorded on informal records maintained by the employee and approved by the supervisor. These hours are not recorded on a timesheet for input into the payroll system. Such hours should normally be used within the pay period they were earned. These hours may not be paid for in cash at any time. In other situations where there will be extensive hours beyond the normal work week due to specific projects or activities, **overtime** payment authorization can be requested. Such a request must be justified and requested through an exception request process.

## **PROCEDURE (FOR OBTAINING OVERTIME APPROVAL FOR EXEMPT EMPLOYEES)**

**Requester.** Send a memo to the DHS Human Resources Director requesting approval to pay overtime to an otherwise exempt individual. The memo should contain:

- Employee's Name(s)
- Employee's Identification Number(s)
- Employee's Position Code(s)
- Maximum number of overtime hours to be worked within a pay period(s)
- Date by which overtime will be completed
- Reason for the overtime, specifying the circumstances which make the overtime necessary.

### **Sample 4**

#### Overtime

The Company strives to ensure that employees are generally able to complete their work tasks within the work week. In case of emergency or unforeseen circumstances, an employee may be requested to work over 40 hours in a work week. Any time scheduled over 40 hours must be pre-authorized by the supervisor.

It is not considered overtime if an employee works over 8 hours in one day. However, the total hours worked should not exceed 40 hours for that week (Sunday through Saturday).

Overtime will be paid at the rate of one and one-half times the regular rate of pay for any hours worked over 40 within one work week (Sunday through Saturday).

Each work week (Sunday through Saturday) is considered separately in computing overtime and all other pay.

#### Exempt and Non-Exempt Employees

- Employees who meet the criteria outlined in Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541 are considered Exempt employees
- Exempt staff is eligible for compensatory time

### **Sample 5**

Full-time non-exempt (hourly) employees may occasionally be asked to work more than 40 hours in a given work week (Sunday through Saturday). The supervisor of the employee must give prior authorization for any overtime. Such overtime work, which is undertaken only when necessary, must be approved by the department or branch head. The employee will be compensated for overtime hours worked at the rate of one and one-half times the employee's base rate of pay. Working unapproved overtime may be cause for disciplinary action.

Please note that sick leave, vacation, personal, closed holiday, or leave without pay hours occurring in a 40+ hour work week, do not count as hours worked for the purposes of calculating overtime.

*Seventh Consecutive Day Rule*

If an employee works seven consecutive days in the same work week (Sunday through Saturday) and this results in the employee working more than 40 hours, the employee will be paid overtime for all hours worked on the seventh day.

### Sample Policy Statements

The following sample policy statement can be utilized as a starting point for an employer to easily customize as part of their employee manual for their company. The policy can be **customized** by adding information specific to the company. Suggestions and examples are included to give additional information and help determine the company's policies.

#### **Sample 1**

The Company including its subsidiary companies (the Company) will comply with all relevant and applicable state and Federal labor regulations, treaties, conventions and principles relating to the protection, welfare and health and safety of children. Furthermore, the Company will not employ any person deemed by state or Federal laws, conventions or regulations to be a child in any capacity in any industrial operation under its control.

As a good corporate citizen, the Company is committed to the principles of protecting children from child labor exploitation. The Company believes that their future development and that of the communities and countries in which they live is best served through education not child labor.

This is a commitment the Company seeks to apply throughout the supply chain, from production to the distribution and sale of manufactured products, as well as to the recovery and disposal of waste materials.

The Company acknowledges that it is sometimes customary in some industries for children to play a part in the day-to-day work, partly to learn essential craft skills for ensuring the long-term sustainability of an industry. Nevertheless, the Company aims to apply this commitment and principles to contracted supplies by education through its field extension service, seeking to ensure that:

- a) The welfare and health & safety of children are paramount at all times.
- b) Any form of labor, undertaken by children for the development of craft skills, does not conflict with or impede their proper educational development including school attendance.
- c) No work activity that could be considered to put children at risk is undertaken by children, e.g., handling mechanical equipment or agro-chemicals, etc.

The Company has overall responsibility for this policy. Each operating and end-market company is responsible for introducing procedures and programs to implement this policy and to proactively demonstrate the Company's commitment to corporate social responsibility in this regard.

This policy statement applies to the Company and all its subsidiaries and will be reviewed periodically by the Board. It will also be circulated to associate companies, who will be encouraged to adopt the policy as best practice.

## Sample Policy Statements

Most states have laws mandating a lunch break of at least 30 minutes. Employers should check their state agency for the laws in your area (see Chapter 7 on State Wage and Hour Laws in this manual.)

### **Sample 1**

#### **Lunch Periods**

Employees are allowed a one-hour lunch break. Lunch breaks generally are taken between the hours of 11:00 a.m. and 2:00 p.m. on a staggered schedule so that your absence does not create a problem for co-workers or clients.

#### **Break Periods**

This Company does not provide for employees to break during production activities except for the above outlined lunch period.

Or

This Company provides for employees to break during production activities at the following times: *fill in appropriate times here.*

If employees have unexpected personal business to take care of, they must notify their direct supervisor to discuss time away from work and make provisions as necessary. Personal business should be conducted on the employee's own time.

Employees who do not adhere to the break policy will be subject to disciplinary action, including termination.

### **Sample 2**

Supervisors or managers are responsible for scheduling lunch periods and/or breaks as described below:

#### **Mandatory Lunch Period**

Employees who work at least six consecutive hours shall be afforded a lunch period (meal break) of at least 30 minutes except in situations where shift coverage precludes such lunch breaks.

Employees who work a second consecutive shift shall be afforded a meal break after working four hours during the second shift.

The lunch period shall not be included in the count of hours worked per day, except when the agency head or designee has designated the lunch break as part of the work schedule. When employees are required to work during their lunch, that period shall be counted as time worked.

Example: When necessary to provide staffing for client services and care, the lunch period shall be considered time worked.

### **Discretionary Breaks**

Agency managers may grant employees who work an eight-hour day or longer a maximum of one 15-minute rest break before and one 15-minute rest break after the required lunch period.

Rest breaks are included in the required hours of work per day.

### **Impermissible Use of Breaks**

The lunch period and the break(s) must be taken separately and breaks may not be used to extend the lunch period. Except with prior approval, lunch breaks should not be adjusted to compensate for employees' late arrival or early departure, or to cover time off for other purposes.

Note: Managers reserve the right to determine when or if lunch periods may be used to compensate for an employee's late arrival or early departure.

### **Sample 3**

#### **Meal periods/Breaks**

Employees working five (5) hours or more in a day shall be scheduled for a one-hour meal period, which shall be unpaid.

Employees are allowed one fifteen (15) minute break for each four (4) hour work segment. Break periods do not accrue.

Break time and meal periods cannot be used to arrive late or leave early.

Special consideration for extended break or lunch time may be made for extenuating circumstances at the discretion of the director.

All breaks must be taken away from the employee's work area.

### **Sample 4**

#### **Rest and Meal Periods**

If you are a full-time nonexempt employee, you will have 2 rest periods of 15 minutes in length each workday. When possible, rest periods will be scheduled in the middle of work periods. Because rest time is counted and paid as time you worked, you must not be absent from your workstation longer than the rest period allows.

All full-time employees will have one meal period of 30 minutes in length each workday that they work more than 4 hours. If an employee is working only 4 hours, they are required to take

one 15 minute break during that time. The employees that are working on any given day should rotate a lunch break among themselves. When taking a lunch break or 15 minute break, keep in mind any staffing needs at the desk during that time. During meal periods, you are not subject to any work responsibilities or restrictions. You will not be paid for meal period time.