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Employees**Table of Contents:**

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## Employee Hours and Overtime (LP5.29)

THE LANGUAGE USED IN THE LANDER POLICY FOR ADMINISTRATION AND STAFF DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND LANDER UNIVERSITY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. LANDER RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. LANDER UNIVERSITY'S OFFICE OF HUMAN RESOURCES HAS THE AUTHORITY TO INTERPRET THE UNIVERSITY'S HUMAN RESOURCES POLICIES.

### 1 Summary

This policy sets forth guidelines regarding hours of work and overtime for Lander University employees. The Fair Labor Standards Act (FLSA) establishes minimum wage rates, maximum work hours, overtime pay requirements, equal pay standards, and child labor restrictions for employees subject to its provisions. This policy also complies with South Carolina Code of Laws Section 8-11-55 and South Carolina State Human Resources Regulations 19-707, which allow provisions of overtime and the payment of compensatory time in lieu of overtime pay for state entities.

### 2 Exempt/Nonexempt Status

2.1 Employees are considered "exempt" if their job duties and their salary meet certain thresholds within the FLSA. These exempt employees are not subject to the FLSA minimum wage, overtime, or record-keeping requirements. As such, exempt employees are expected to work as many hours as required to perform the duties of the position. The exempt status of an employee in a bona fide executive, administrative, professional, or computer employee position shall be determined by the Director of Human Resources, or designee, the specific duties and salary of the position.

2.2 "Nonexempt" employees are covered by, or subject to, the minimum wage, overtime, and record-keeping requirements of the FLSA. All employees who are not considered exempt from the FLSA will be considered nonexempt.

### 3 General Information

- 3.1 Compensation for all employees is based on 40 hours per week, or 2,080 hours per year. The regular rate of pay for purposes of calculating overtime due includes all remuneration for employment paid to an employee (including base pay), and all compensation not included in base pay as outlined in the State Human Resources Regulations, with the exception of discretionary bonuses. Nonexempt employees must not be paid less than minimum wage.
- 3.2 All employees, including temporary and student employees, will be paid no less than the current minimum wage.
- 3.3 The normal scheduled workweek for the university is 37.5 hours, but pay is based on 40 hours.
  - 3.3.1 For FLSA and record-keeping purposes, the defined workweek begins at 12:01 a.m. on Saturday and ends at midnight on the following Friday. The workweek stands alone in determining overtime compensation or compensatory time for nonexempt employees, with the exception of law enforcement personnel.
  - 3.3.2 Any employee may be required to work up to 40 hours per workweek without additional compensation. No covered employee shall receive additional compensation or compensatory time for hours worked between 37.5 and 40.0 hours per workweek.
- 3.4 The work period for law enforcement employees and fire protection employees may be established from 7 to 28 consecutive days. Law enforcement employees must receive overtime compensation in the form of overtime compensation or compensatory time for all hours worked over 80 hours in a 14-day work period.

### 4 Hours Worked

- 4.1 Hours worked include all time that the employee is required to be on duty or at the prescribed workplace and all time during which the employee is permitted to work. The hours worked include any bona fide work that the employee performs on or away from the prescribed workplace if the supervisor knows or has reason to believe that the work is being performed. Time spent in leave status is not considered hours worked.
- 4.2 A nonexempt employee may be allowed to work in excess of the normal workday and may be given time off during the same workweek at the rate of an hour for an hour to avoid working over 40 hours in a workweek. This adjustment is not allowed for hours worked between 37.5 and 40 hours during any workweek. This type of work rescheduling precludes working more than 40 hours in a workweek and eliminates the need for overtime payment.

- 4.3 Law enforcement personnel may be required to work a variable schedule over a 14-day period.
- 4.4 Department heads and managers may change an employee's regular schedule in order to ensure that the hours worked in a given workweek will not exceed 40 hours.
- 4.5 General Information on Hours Worked
  - 4.5.1 On-call time is not regarded as work time unless an employee is required to remain at the employer's premises or prescribed workplace or is so restricted that the employee cannot use the time effectively for his or her own purposes. If the employee is not confined to his or her home or any particular place, but only required to leave word where he or she can be reached, then the hours are not considered working hours.
  - 4.5.2 A bona fide meal period of 30 minutes or more that occurs during the scheduled workday is not considered hours worked if the employee is completely relieved from duty for the purpose of eating a meal. Meal periods may vary from 30 minutes to one hour.
  - 4.5.3 Breaks of short duration must be counted as hours worked. One morning and one afternoon break of no more than 15 minutes each is permitted. However, agencies may establish breaks but are not obligated to establish breaks, as breaks are a privilege and not a right. Breaks shall not be used to allow an employee to come in late, to leave early, or to extend the meal period.
  - 4.5.4 Travel time for nonexempt employees may be hours worked under some conditions. The following guidelines apply to nonexempt employees:
    - 4.5.4.1 Home-to-Work Travel – An employee who travels from home before the regular workday and returns to his or her home at the end of the workday is engaged in ordinary home-to-work travel, which is not considered work time.
    - 4.5.4.2 Travel that is All in a Day's Work – Time spent by an employee in travel as part of his or her principal activity (e.g., travel from job site to job site during the work day) is considered as work time and must be counted as hours worked.
    - 4.5.4.3 Home-to-Work Travel on a Special One-Day Assignment in Another City – When an employee who regularly works at a fixed location in one city is given a special one day work assignment in another city and returns home the same day, the time spent in traveling to and returning from the other city is considered work time, regardless of the time of day or day of the week, except that the employer may deduct the time that the employee would normally spend commuting to the regular work site from the total travel time.

4.5.4.4 Travel Away from the Home Community –Travel away from home involving an overnight stay for nonexempt employees is considered time worked when it occurs during the employee’s normal working hours. The time is considered hours worked both on regular working days during normal working hours and also during corresponding hours on non-working days. Time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, or bus, or in an automobile is not considered work time.

4.5.4.5 Lectures, Meetings, and Training Programs – When a nonexempt employee by reason of official responsibilities is required to attend lectures, meetings, training programs, etc., the time of attendance shall be considered work time.

4.5.5 Time off for holidays, paid leave, and compensatory time are not counted as hours worked when calculating overtime.

## 5 Overtime/Compensatory Time

5.1 Overtime is defined as all hours worked in excess of 40 hours in a 7 consecutive day work period and must be pre-approved.

5.2 A nonexempt employee shall be paid no less than one and one-half times his or her regular rate of pay for all hours worked over 40 hours in a workweek or shall be granted compensatory time at a rate of one and one-half hours for each hour of overtime worked, which is allowable for government agencies per the FLSA. Nonexempt employees, who have a scheduled workweek of 37.5 hours, shall not receive additional compensation or compensatory time for hours worked between 37.5 and 40.0 hours per workweek.

5.3 The requirements that overtime pay must be paid or compensatory time granted to nonexempt employees after 40 hours of work in a workweek shall not be waived by agreement between a supervisor and an employee.

5.4 Nonexempt employees may accumulate up to 240 hours of compensatory time. For overtime worked by a nonexempt employee with an accumulation of 240 hours of compensatory time, the overtime must be paid in the employee’s next regular paycheck. Law enforcement and fire protection employees may accumulate up to 480 hours of compensatory time. For overtime worked for an employee who has accumulated 480 hours of compensatory time, the employee must be paid.

5.5 The Office of Human Resources is responsible for ensuring that employees do not accumulate compensatory time in excess of the maximum allowed and for certifying that funds are available within the existing budgets to pay overtime in excess of the maximum allowed accumulation.

- 5.6 Sworn law enforcement officers shall be paid at straight hourly pay rate for all hours worked up to 80 hours during a 14-day work period, and overtime for nonexempt law enforcement officers shall be paid at the rate of one and one-half times the hourly rate for hours worked in excess of 80 hours during a 14-day work period.
- 5.7 When a nonexempt employee works over 40 hours in two or more nonexempt positions, the blended rate will be used to calculate overtime. Employment in two or more positions by nonexempt employees generally is not approved.
- 5.8 Compensatory time off for an employee must be scheduled and approved by the employee's respective supervisor. The request should be granted if made with reasonable advance notice and if work load permits.

## 6 Overtime Usage

- 6.1 The use of overtime should be an exception to the regular work schedule and occur on an occasional basis to meet a sudden increase in the workload, to overcome productive time lost in the event of some mechanical failure, or to meet the demands of a crisis situation.
- 6.2 When any office/department/individual is found to be consistently charging overtime, the need for such overtime should be reviewed by appropriate management. Every attempt should be made to avoid the repetitive and frequent use of overtime.
- 6.3 It shall be the responsibility of each manager to determine that the provisions of this policy are administered in the best interest of the university. Each manager is responsible for the prior approval of hours worked that will result in overtime. However, unauthorized overtime must be compensated. Unauthorized overtime may result in disciplinary actions for managers and/or employees.

## 7 Holidays

- 7.1 An employee who is required to work on a legal holiday shall be given compensatory holiday leave in accordance with Section 19-708.04 of the State Human Resources Regulations. Time worked on a legal holiday shall be used in computing total hours worked.
- 7.2 All nonexempt employees who are not allowed to take compensatory holiday leave earned for work on a holiday within a one-year period shall be compensated for the holiday work by the university at the straight hourly pay rate of the employee.
- 7.3 All nonexempt employees will be paid for unused compensatory holiday leave upon separation of employment from state government, upon movement to a position in another state agency (whether the new position is exempt or nonexempt), or upon starting employment in an exempt position at the university. Exempt employees shall not be paid for unused compensatory holiday leave under any circumstances.

- 7.4 The length of an employee's holiday is computed based on the number of hours in the employee's average workday. The number of hours in a holiday is determined by dividing the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

## 8 Exempt Employees

- 8.1 Although the FLSA does not require overtime compensation for exempt employees, compensatory time off may be an option in approved circumstances.
- 8.2 If compensatory time off is granted, exempt employees will earn one hour of compensatory time for each hour worked in excess of 40 hours in the official workweek. Compensatory time off may be scheduled only with supervisory approval. It is possible that an exempt employee will not be able to use all of their compensatory time.
- 8.3 Exempt employees may receive compensatory time off for hours worked, for time spent traveling, or for attendance at lectures, meetings, training programs, etc., in excess of the normal 40-hour workweek. Under no circumstances will an exempt employee be allowed to accumulate more compensatory time than the FLSA allows for a nonexempt employee.
- 8.4 Upon separation from employment, exempt employees will not be compensated for any unused compensatory time.
- 8.5 Within the provisions listed above, it will be the responsibility of each department head to develop procedures for the authorization and use of compensatory time for exempt employees, and to keep records to substantiate the consistent application of procedures.

## 9 Temporary Employees

- 9.1 The hourly rate is the "regular rate" for temporary employees. This rate is calculated by dividing the annual salary by 2,080 hours. Temporary employees shall be compensated for all hours worked.
- 9.2 Although a temporary employee may be designated as exempt, an exempt temporary employee must be paid a salary regardless of the number of hours worked.

## 10 Impact of Status Change

- 10.1 If a nonexempt employee accepts a position that is considered exempt either within Lander University or with another state agency, compensatory time must be paid prior to the employee's starting in the exempt position.
- 10.2 If a nonexempt employee separates from employment at Lander University or moves to another state agency, any accrued compensatory time must be paid out prior to the separation or movement. Compensatory time must be paid at a rate of compensation not less than either the average regular rate received by the employee during the last three years of employment or the final regular rate received by the employee, whichever is higher.

## 11 Electronic Devices/System Access

- 11.1 Generally, it is not expected that nonexempt employees will perform university business outside of their normal work hours unless such work has been explicitly approved by their supervisors.
- 11.2 Nonexempt employees should not check or access email before or after standard work hours unless directed by their supervisor.
- 11.3 When nonexempt employees are required to perform work outside their normal work hours, they should copy their supervisors on all work-related emails and correspondence after hours so that their supervisors can monitor the amount of time worked.
- 11.4 Nonexempt employees are required to report all hours worked after normal work hours, including time spent on cell phones, email, internet, and so forth.

## 12 History

- Drafted and/or Revised by Lander University Office of Human Resources on 9/8/2020.
- Approved by the South Carolina Division of State Human Resources on 10/21/2020.
- Reviewed by Board of Trustees Policy Committee on 4/23/2021.
- Revised by Human Resources and Policy Coordinator on 4/28/2021.
- Approved by Board of Trustees on 5/10/2021.