



Personnel Policy: Payroll

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Fair Labor Standards Act (FLSA)

FLSA does six things:

- Sets minimum wage.
- Establishes overtime pay requirements.
- Sets recordkeeping requirements.
- Sets equal pay for equal work.
- Restricts child labor – restrictions for 14-15- and 16–17-year-olds.
- Provides nursing mothers breaks.

FLSA does not require:

- Vacation, holiday, sick, or severance pay.
- Meal or rest periods (except nursing mothers.)
- Premium pay for weekends or holidays.
- No daily overtime is required.
- Pay raises or fringe benefits.
- Discharge notices or immediate discharge pay.
- Limits to number of hours worked (except for under the age of 16.)

FLSA Exemptions

FLSA requires overtime/compensatory time after 40 hours physically worked in a 7-day work period.

There are some exemptions which include:

- Administrative
- Executive
- Learned Professional
- 207(k) for Law Enforcement

To be classified as exempt, the position must meet the salary test and the duties test. The salary must be \$35,568 per year, \$684 per week. The job duties vary by classification, but they must meet all the requirements of the regulations. **DOL issued a proposed rule in 2023 to increase the salary threshold for exempt classifications. DOL is estimated to issue the final rule in April 2024, to be effective 60 days after adoption. The proposed salary threshold is estimated to increase to \$55,068 but could be higher.** Be very careful about misclassification – they can be costly. If in doubt, keep positions protected under the law by classifying them as non-exempt.



207(k) allows for an exemption for law enforcement (deputies and jailers, not dispatchers) and fire fighters. The county may elect to adopt 207(k). The Commissioner’s Court must take action to adopt the 207(k) exemption. If no action is taken, law enforcement (deputies and jailers, not dispatchers) and fire fighters should be paid overtime on a 40-hour workweek. If adopted, the county must decide on a work period. Once the work period is decided, overtime may be paid or compensatory time accrued, at the number of hours in that work period. There is no other option. A county cannot change the number of hours at which they pay overtime.

When looking at your staff to determine those eligible for the 207(k) exemption, you must consider the 20% rule. (§ 553.212) Some employees may engage in both 207(k) exempt and non-exempt work. For example, you may have a licensed jailer that assists with dispatch. The jailer would be considered law enforcement so long as the dispatch work does not exceed 20% of the total hours worked by that employee in the work period. If the percentage of time exceeds 20%, the employee is not considered law enforcement.

Maximum Standard Hours 29 C.F.R. 553.230

Work Period (days)	Law Enforcement	Work Period (days)	Law Enforcement
28	171	17	104
27	165	16	98
26	159	15	92
25	153	14	86
24	147	13	79
23	141	12	73
22	134	11	67
21	128	10	61
20	122	9	55
19	116	8	49
18	110	7	43

The county should determine if an employee is paid hourly or salary. Being paid salaried does not mean the same as being exempt from overtime. A position can be non-exempt and salary. This should be determined in the adoption of 207(k.) If paid hourly, the employee must be paid for all hours worked in the work period. If paid a salary, the salary would cover all hours up to the number in the work period or the hours determined by the court. The county may allow an employee to account for less, such as 80 or 160, but the salary still covers all hours up to the designated amount. Overtime/compensatory time may only be paid/earned after the maximum number of hours in the regulations. (ex. 86 or 171)



The county may elect to pay/accrue additional hours, such as the hours between 80 and 86 or 160 and 171. This is not required if the employee is paid a salary. If elected, the hours are considered an extra benefit. These hours may be paid at the employees' hourly rate and do not have to be paid at the regular rate. If paid at the regular rate, we recommend not calling the hours overtime and suggest "premium rate."

Compensatory Time

Accruing compensatory time only applies to state and local governments. The county may decide to elect the option of compensatory time. If so, it must be stated in the policy, employees will not be paid overtime, they will accrue compensatory time. Employees cannot lose compensatory time, 29 C.F.R. 553.27. They must be able to use the time or be paid out the time. The maximum number of accruals allowed by statute, 29 C.F.R. 553.24, is 240 hours for non-law enforcement and 480 hours for law enforcement. Once an employee reaches the maximum number of hours, they must be paid overtime until the accruals are below the maximum. The county may set a lower maximum amount.

Recordkeeping

Timesheets are the only proof you paid an employee accurately. The county may elect any method, but they must be complete and accurate. Time sheets are a government record and falsification are a crime under the Texas penal code—see 37.10. The absence of time sheets creates problems. Be sure to keep accurate records of time worked and have both employees and supervisors sign them.



Best Practice

- Conduct a self-audit – correct errors timely.
- Review job duties and job descriptions.
- Apply the standard test for exempt employees.
- Review timesheets.
- Review recordkeeping methods.

Required Policies

- Fair Labor Standards Act Safe Harbor Policy
- Nursing Mothers Break
- Compensation Policies:
 - Payroll Deductions
 - Designated Work Week and/or Work Period (date and time)
 - Designated Pay Period
 - Overtime/Compensatory Time requirements

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