ACTION ITEM # 0 3

COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

Office of the Commissioner

Margaret Ross Schultze
COMMISSIONER

October 15, 2014

MEMORANDUM

To: Members, State Board of Social Services

From: Margaret Ross Schultze

Action: Request Approval of Changes to the Administrative/Human Resources Manual for Local Departments of Social Services (LDSS) - Chapter 2

State Board of Social Services approval is sought for changes to Chapter 2 – Classification & Compensation of the Administrative/Human Resources Manual for Local Departments of Social Services (Local HR Manual).

Revisions to Chapter 2 address concerns expressed by the Virginia League of Social Services Executives' Personnel Committee regarding On-call Pay. The entire chapter was also reviewed for consistency with current terminology and practice. State Board approval will ensure that the Local HR Manual provides policy that is in compliance with federal and state requirements and VDSS and industry practices.

Upon Board approval, these changes will be effective November 1, 2014.

MRS:lw

Attachments

Administrative Manual
Revision of Chapter 2 – Classification & Compensation
Summary of Proposed Changes
October 15, 2014

Section	Page(s)	Description
Entire Chapter (including Table of Contents)	Entire Chapter	Reformat and change font of entire chapter to be consistent with other chapters in manual. Add page numbers to Table of Contents and correct sub-section titles to account for chapter revisions and to correct typos. Where appropriate, replace "HRM" with "VDSS HR", "LDSS" with "local board" or "local director", and "State Board of Social Services" or "The Department of Social Services" with "State Board" throughout entire chapter to reflect current terminology. Replace "a LDSS" with "an LDSS" for grammatical reasons.
Section I – Classification and Compensation	3	Add the words "objective of the" and delete apostrophe and the word "objective" for better word flow.
Section I.A.	3	Delete the word "to" to correct typo.
Section I.A.3.	3	Make "Deviations" lower case for grammatical reasons.
Section I.B.1.a.	4	Replace the word "describe" with "provide" for grammatical reasons.
Section I.B.2.	4	Revise entire section as Work Profiles have been replaced with the Employee Performance Plan and Evaluation (EPPE).
Section I.B.3.a.	4	Replace "Local Position Classification Request (LPCR)" with the current "Local Position Request Form (LPRF)". Replace "WP" with "EPPE".
Section I.B.3.b.	4	Delete the word "Classification" as it is redundant.
Section I.B.3.b.(3)	5	Delete the abbreviation "OT" and add the words "Occupational Title" for clarity. Delete the sentence regarding function codes as they are no longer used.
Section I.B.3.b.(4)	5	Delete the sentence regarding function codes as they are no longer used.
Section I.C.5.	5	Replace the word "if" with "is" to correct typo.
Section I.D.	5-6	Add the sentence "Local departments should confer with the local jurisdictions and monitor hours worked by employees in the various types of positions to ensure compliance with laws requiring provision of benefits (such as the Patient Protection and Affordable Care Act)" to stress the importance of monitoring changes in law and resulting administrative requirements.
Section I.D.1	6	Add the sentence "For information about conditional status periods see Chapter 6. Section I.A.6. Definitions and Chapter 6. Section I.D.1 Interim Evaluations." to point manual users to these sections.

Section	Page(s)	Description
Section I.D.4.	6	Replace the word "received" with "receive" to correct typo. Break second paragraph into two sentences. Delete the words "but they" and add the words "except those required by law" to account for mandated health care benefits under the Affordable Care Act. Add the words "Temporary employees" to begin the new sentence.
Section I.D.5.	7	Break last sentence of first paragraph into two sentences. Add the words "except those required by law" to account for mandated health care benefits under the Affordable Care Act. Delete the word "and" and add the words "Emergency employees" to begin the new sentence.
Section I.F.2.	7	Delete the typo "ach" and add the word "an" to correct typo.
Section I.F.2.a-d.	7-9	Revise entire section to improve flow and update for current language.
Section I.F.2.d.	9-14	Add the word "local" or "local compensation plan" throughout section for consistency.
Section I.F.2.d.(6)	11	Add language regarding cost of living increases for clarity purposes.
Section I.F.2.d.(7)	11	Add more detailed information regarding the range revision process and the need for guidance from VDSS HR staff.
Section I.F.2.d.(8)(b)	12	Delete the words "poison" and "he" and add the words "position" and "the" to correct typos.
Section I.F.2.d.(9)	13	Replace the word "ones" with "an" for grammatical reasons.
Section I.F.2.d.(10)	13	Add the word "Acting" to reflect terminology commonly used in the situations to which this section applies.
Section I.F.2.d.(11)	13	Add the words "attainment of" and "where there is no change in position responsibilities, occupational title, pay band or tier" for clarity purposes.
Section I.F.2.d.(12)	14	Delete the words "If the employee is deemed critical to the LDSS's missions and operations", capitalize the "A"and add the words "and should be based on bona fide business needs" to be less subjective. Replace the word "for" with "per," "offer" with "offered" and "position" with "position's" for accuracy. Add the word "pay" before "band maximum" for clarity.
Section I.F.2.d.(13)	14	Add language regarding the requirement of an End of Trainee (EOT) plan.
Section I.G.	14	Delete the words "for Child Protective Service Workers" to reflect that other workers such as Adult Protective Service Workers also receive on call compensation.

Section	Page(s)	Description
Section I.G.1.	14-15	Add the words "adult and/or" and "adult and/or child" to reflect that both adult and child protective services require employees knowledgeable about policy requirements.
Section I.G.2.	15	Delete the words "after hours Child Protective Services" to allow the policy to cover other on call workers.
Section I.G.2.a.(1)	15	Replace "LDSS" with "local board" to clarify that it is a local board decision. Replace the word "cash" with "monetary" for accuracy purposes. Delete $10.00 and increase maximum flat rate reimbursement to $16.00. Add the words "8 hour" and replace the word "assignment" with "shift" for clarification purposes. Add the option of providing the equivalent of one hour of compensation at the employee's normal rate of pay to be more equitable with the reimbursement allowed jurisdiction wide LDSSs. Add the words "The local board may allow the local director on a case by case basis to substitute:" and delete "Exercising either of the above option as on a case by case basis" for clarity purposes.
Section I.G.2.a.(2)	15	Add the words "compensation or" to clarify that the compensation received may not qualify for overtime pay.
Section I.G.2.b.(1)(a)	16	Add the word "hours" and replace the hyphens with a colons throughout Section I.G.2.b.(1) for clarity purposes.
Section I.G.2.b.(1)(b)	16	Add language to clarify that at the option of the local director and prior to hours worked, a non-exempt employee may receive compensatory time in lieu of overtime pay. Delete unnecessary ",or" and the words "Exercising either or the above options on a case by case basis" due to previous changes.
Section I.G.2.b.(1)(c)	16	Add the words "Adult and/or" to reflect both situations when the local director or supervisory staff may be providing 24 hours protective services.
Section I. H.1.	17	Add state law citation and revised language to better clarify that the $3,000 supplemental pay is not reimbursable.
Section I. H.2.	17	Delete the words "or AdministrativeTribunal Service" and add the words "Service or Required Attendance at Administrative Hearings" for clarity. Add state law citation and additional language to clarify that an employee may choose to surrender compensation received for jury duty or court service and use available and appropriate types of leave instead. In the second paragraph, replace the "s" before "witness" with an "a" and capitalize the word "Nominal" to correct typos. Delete unnecessary statement regarding expert witnesses.

Section	Page(s)	Description
Section I.H.4.	17-18	Reword entire section including heading for consistency with prior sections. Renumber and rearrange order for better flow.
Section I. I.1.b.(1)(a)(ii)5. & Section I.I.1.b.(1)(b)(iv)	19-20	Add a part "C" and the words "Jurisdiction Wide (JW)" to account for changes to the Jurisdiction Wide (JW) Self-Analysis Form and title of the form.
Section I.I.1.b.(1)(e)	21	Add the Code of Virginia citation and delete the words "For any compensation–related deviation".
Section II.A.13	24	Add a definition of Workweek consistent with the definition used in Chapter 5.
Section II.B.2.a. and a.(1) & (2)	25	Add the word "may" before include and replace "can not" with "cannot" to correct for typo. Add the words "15 minutes or" and delete "than 20 minutes" for consistency with previous revisions to Chapter 5.
Section II.B.2.b.(6)	26	Replace "20" with "15" for consistency with previous revisions to Chapter 5.
Section II.B.2.c.	26	Add the word "as" for clarity and replace the words "should not" with "cannot" for consistency with other sections of the Chapter.
Section II.B.3.	26	Replace "time" with "times" and add the words "or break periods of more than 15 minutes" for consistency.
Section II.C.1.	28	Replace the word "premium" with "overtime" for clarity and consistency with federal law.
Section II.C.2.	28	Replace the word "effect" with the more grammatically correct "affect."
Section II.C.3	28	Replace "LDSS" with "local director" and add the words "and prior to overtime hours worked" to stress that compensatory time in lieu of overtime must be pre-arranged.
Section II.D.1.	28	Move the word "and" to an appropriate place in sentence.
Section II.E.	29	Replace "Director" with "local director".
Section III.A.	31	Add reference to additional information on provisions for public employees.
Section III.B.1.b.	31	Add the words "at least" to reflect actual FLSA language.
Section III.E.2.	36	Replace "To" with "to" in the heading for consistency.
Section III.G.	41	On the Duration of leave accruals row in the chart (and throughout remainder of Section III and in Sections IV and V), replace the word "lapses" with "expires" for clarity.
Section IV.A.1.	47	Delete "or minimum wage" as minimum wage does not impact compensatory leave.
Section IV.A.3.	47	Add the word "hours" for clarity purposes.
Section IV.A.5.	47	Revise definition of workweek to be consistent with definition found in Chapter 5.
Section IV.B.2.-4.	48	Replace the word "cash" with "monetary" for accuracy.

Section	Page(s)	Description
Section V. C.1.b.	52	Add the words "routine" "in circumstances" "outside of normal business hours (e.g. evenings," and an end parentheses for clarity purposes.
Section VI.A.2.b.	56	Add language to clarify that LDSSs who deviate on Holiday policy must follow the local jurisdiction's Holiday schedule due to calls received by VDSS HR staff whenever the Governor adds Holidays to the calendar.
Section VII.	57	Rearrange headings and update form name and SPARK section name.

Chapter 2 – Classification & Compensation

Chapter 2
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Chapter 2 – Classification & Compensation

Section I
Classification and Compensation

It is the objective of the State Board of Social Services' ~~objective~~ to establish and maintain a job classification structure and employee compensation plan that cultivates a high performing, diverse and well-trained workforce that is engaged in continuous learning.

A. Occupational Structure (Job Classification)

VDSS HR~~HRM~~ develops the Occupational Structure which includes approved descriptions for each occupational group and occupational title in the group. Each title is assigned a title code and ~~to~~ a pay band and pay tier within the band.

1. Purpose

   The purpose of the structure is to organize and delineate the specific job tasks that need to be performed in order to provide social services to the citizens of the Commonwealth of Virginia. All occupational groups/titles included represent the duties and responsibilities that are inherent to effective LDSS performance.

2. Components

   The Occupational Structure is consistent with the federal Standard Occupational *Categories* (SOCs). The structure categorizes jobs by professions. Each profession is subdivided into Occupational *Groups* (OG) that include Occupational *Titles* ~~(OT)~~.

   All jobs are classified to an Occupational Title. The Occupational Title Description (OTD) includes a general description of work, general work tasks/duties, and the necessary knowledge/skills/abilities, education/training, and/or other job requirements. The OTD serves as a basis for classifying jobs at the local agency level.

3. Maintenance

   VDSS HR~~HRM~~ conducts periodic reviews or studies as part of its maintenance of the classification structure / compensation plan. When a need for a new title or revision to an existing title is identified, a proposal is submitted to the State Board of Social Services (State Board) for approval.

   An~~A~~ LDSS may be part of a locality's classification system provided minimum standards for comparable classifications within the Occupational Structure are met. This would be a "deviation" which requires review and approval by the State Board ~~of Social Services~~ and/or the Commissioner. The approval process for deviations~~Deviations~~ should be followed.

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4. Sanctions

Should an~~a~~ LDSS not comply with the principles and practices of the classification structure, withholding of State reimbursement funding may result.

B. Classification of Positions

1. Occupational Title Descriptions (OTDs)

a. VDSS HR~~HRM~~ provides written descriptions of the occupational titles available for LDSS use. The descriptions provide~~describe~~ the general nature of work characteristics of a given title and contain qualification guidelines.

b. VDSS HR~~HRM~~ uses the descriptions as guides when determining the positions that may be allocated to a respective occupation. They are not intended to prescribe the duties and responsibilities of any given position or to preclude the local director's authority for assigning duties or controlling the work of any staff member.

2. Employee Performance Plan and Evaluation (EPPE)~~Work Profiles (WP)~~

a. An Employee Performance Plan and Evaluation (EPPE)~~A Work Profile (formerly position description)~~ contains a position summary and a list of core responsibilities/essential duties~~work tasks~~. The LDSS must develop an EPPE ~~a WP~~ for each position.

b. A particular position may vary from another position with the same position title due to workload priorities, ~~or~~ external factors, or local needs. When this variation occurs, the job duties should be reprioritized.

3. Establishment, Abolishment, or Classification of Positions

a. Local Position ~~Classification~~ Request Form (LPRF)~~(LPCR)~~

VDSS HR~~HRM~~ allocates positions to their appropriate Occupational Group and Title on the basis of assigned duties and responsibilities. Whenever there is a need to establish a new position, abolish an existing position, reallocate, or redefine a position, the local director submits a signed LPRF~~LPCR form~~, an organizational chart, and an EPPE~~a WP~~ to VDSS HR~~HRM~~ for review and approval.

b. Types of Local Position ~~Classification~~ Actions

(1) Position Establishment – The creation of a new position

(2) Position Abolishment – The elimination of an existing position

(3) Position Reallocation – The reclassification of a vacant position from one Occupation Title~~OT~~ to another Occupation Title. ~~This includes changes to functions and other codes assigned to the position.~~

(4) Position Redefinition – The reclassification of an encumbered position in recognition of a gradual, unplanned change in duties. A redefinition may be upward, downward, or lateral. ~~This includes changes to functions and other codes assigned to the position.~~

C.Types of Positions

1. Permanent Position

A permanent position has an indefinite duration with no expiration date. Depending upon circumstances, the permanent position may be filled by an employee whose status is probationary, regular, temporary, or emergency.

2. Restricted Position

A restricted position is established for a specific time period with an end date. A restricted position may be filled by an employee whose status is probationary, restricted, temporary, or emergency. A restricted position may be extended upon request.

3. Temporary Position

A temporary position is established to meet a special need of the LDSS. The duration of a temporary position typically does not exceed twelve months, and it is not renewed or extended. Only an employee whose status is temporary or emergency may fill this type of position.

4. Emergency Position

An emergency position may be set up for one year's duration to meet special or immediate needs of the LDSS. An emergency position is filled only by an employee whose status is emergency.

5. Seasonal Position

A seasonal position is continuous with no end date and may be filled by an employee whose status is~~if~~ temporary or emergency. It may be filled for time periods when there is a need for extra help (for example, when the Fuel Assistance Program is active).

D. Categories of Employees

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Any individual employed by an~~a~~ LDSS has no guarantee of employment for a particular term and may at any time be terminated in accordance with policy. Local departments should confer with their local jurisdictions regarding categories of employees and hours worked to ensure compliance with laws requiring provision of benefits (such as the Patient Protection and Affordable Care Act).

1. Probationary Employee

   Individuals accepting a new, re-employment, or transfer-in appointment to a permanent or restricted position serve a twelve-month probationary period. Any individual hired into a permanent or restricted position with probationary status is employed through a competitive selection process.

   Probationary employees are notified when they obtain either regular or restricted status (depending on whether they are in permanent or restricted positions).

   For information about conditional status periods see Chapter 6. Section I.A.6. Definitions and Chapter 6. Section I.D.1. Interim Evaluations.

2. Regular Employee

   Individuals employed in permanent positions obtain regular status upon successful completion of their probationary periods.

3. Restricted Employee

   Individuals employed in restricted positions obtain restricted status upon successful completion of their probationary periods.

   If a restricted employee moves to a permanent position or the position occupied by the employee is changed to permanent status, the employee's status changes from restricted to regular status.

4. Temporary Employee

   Employees with temporary status are employed through a competitive selection process. They may occupy permanent, restricted, temporary, or seasonal positions. A temporary employee is hired with the understanding that the employment is time-limited and does not serve a probationary period.

   Temporary employees receive~~received~~ and accrue no benefits except those required by law. Temporary employees~~but they~~ are eligible to apply for positions that are recruited through an intra-agency selection process.

Normally the temporary status of employees in a restricted or permanent position does not change during the time of their employment. However, the status of a temporary employee may be changed to probationary, restricted, or regular if the LDSS determines that the need for the employee is no longer time-limited. Time served is credited to part or all of the probationary period.

5. Emergency Employee

Employees with emergency status may be employed without going through a competitive selection process. They may occupy permanent, restricted, temporary, seasonal, or emergency positions. An emergency employee is hired with the understanding that the employment is time-limited to fill an immediate need of the LDSS. Emergency employees receive and accrue no benefits except those required by law. Emergency employees~~and~~ are not eligible to apply for positions that are recruited through an intra-agency selection process.

Emergency employee may work no more than the full-time-equivalent of 180 work days (consecutive or non-consecutive) in a twelve-month period.

E. Organizational Charts

Organizational charts provide an overview of the LDSS structure and contain job titles and position numbers for each position depicted on the organization chart. Each local director is responsible for maintaining an up-to-date organizational chart that includes the local director's signature and date.

F. Compensation Schedule and Plan

1. Purpose

The purpose of the Basic State Compensation Schedule is to provide a uniform structure from which each LDSS develops its compensation plan. The plan should ensure comparable pay for comparable work and allow for competitive salaries which attract and retain employees.

2. Development of the LDSS Local Compensation Schedule and Plan

The purpose of the local compensation plan is to define particular rates of compensation for an~~ach~~ Occupational Title in use by the LDSS so as to ensure equal pay for equal work and competitive salaries for attracting and rewarding a well-qualified workforce.

a. Development Period

Each LDSS develops its own local schedule and compensation plan annually. Instructions for completing the local schedule and compensation plan are developed by VDSS HR and provided to each LDSS. Changes to

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the Basic State Compensation Schedule are included. VDSS HR will notify the LDSS of specific timeframes for the submission of the annual local compensation plan and policies.

b. Contents

The LDSS's local schedule and compensation plan includes a listing of all Occupational Titles used by the LDSS along with corresponding codes, band/tiers, and pay ranges. Development of the local compensation schedule ensures internal equity in terms of pay practices. Each LDSS's annual compensation plan includes a strategy for awarding all of the types of salary increases approved for the fiscal year.

c. Selection of Salary Ranges (also see "Range Revisions")

Each Occupational Title is assigned a salary range on the Basic State Compensation Schedule. Exceptions may be granted by VDSS HR based on market surveys of salaries paid for similar or related work, the availability of qualified applicants, sources of competition from other employers in the locality, and turnover rate.

~~a. Development Period~~

~~Each LDSS develops its own Compensation Plan annually. Instructions for completing the Plan are developed by HRHRM and provided to each LDSS. Changes to the Basic State Compensation Schedule are included. HRM will notify the LDSS of specific timeframes for the submission of the annual local compensation plan and policies.~~

~~b. Selection of Salary Ranges (also see "Range Revisions")~~

~~Each Occupational Title is assigned a salary range on the Basic State Compensation Schedule. Exceptions may be granted by VDSS HRHRM based on market surveys of salaries paid for similar or related work, the availability of qualified applicants, sources of competition from other employers in the locality, and turnover rate. The salary ranges selected must maintain the hierarchical integrity of the defined Occupational Groups/Titles within the LDSS and he respective tiers/levels within the groups.~~

~~c. Contents~~

~~The LDSS's schedule and compensation plan includes a listing of all Occupational Titles used by the LDSS along with corresponding codes, band/tiers, and pay ranges. Development of the local compensation schedule ensures internal equity in terms of pay practices. Each LDSS's~~

~~annual compensation plan includes a strategy for awarding all types of salary increases approved for the fiscal year.~~

d. Types of Salary Actions

The salary ranges selected must maintain the hierarchical integrity of the defined Occupational Groups/Titles within the LDSS and the respective tiers/levels within the groups. The following compensation options are available to the LDSS in developing its compensation plan/strategy:

(1) Starting Pay

The annual local compensation plan includes a provision for setting the rate of appointment. All employees are paid at least the minimum Basic State Compensation rate for their Occupational Title. With VDSS HR~~HRM~~ approval, rate flexibility is permitted.

Agencies have the flexibility to:

(a) Set the hire rate at the minimum of the salary range for the position, regardless of any other consideration, **or**

(b) Set the hire rate above the position minimum, based on pay factors such as the candidate's credentials (including related experience), internal alignment, and the LDSS budget. The LDSS's methodology for determining the starting pay is documented in the LDSS's annual local compensation plan.

(2) Probationary Increase

This type of increase may be awarded upon successful completion of a probationary period. Probationary increases must be documented in the local compensation plan.

(3) Promotional Increase (Not to Exceed 15%)

A promotional increase may be awarded as a result of an internal candidate's competitive attainment of a different position assigned to a higher pay band or higher tier within the same pay band. The promotional salary increase must not exceed the maximum of the approved advertised salary range for the new position. The percentage of increase can vary from employee to employee and is based on the methodology documented in the LDSS's approved local compensation plan.

(a) The promotional salary increase must be at least the minimum of the new position salary range or up to 15% above the employee's

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current salary. Promotional salary must not be below the new position salary range minimum, even if the new salary exceeds 15% above the employee's current salary.

(b) An exceptional promotional salary increase above 15% of the employee's current salary and above the new position salary range minimum is permitted as indicated below.

(i) The approved local compensation plan must indicate the methodology for determining any exceptional promotional salary increase.

(ii) The exceptional promotional salary increase is based on individual pay factors including the candidate's work experience, knowledge, skills, and abilities, education, licensure, certification, and operational pay factors such as agency need, internal alignment, and the LDSS budget.

(iii) To exercise this option, agencies must consult with VDSS HR~~HRM~~ to discuss justification for the exceptional promotional salary increase offer prior to seeking approval from the local board.

(iv) After obtaining local board approval, agencies must obtain VDSS HR's~~HRM's~~ approval before making an exceptional promotional salary increase offer.

(4) Upward Redefinition Increase (Not to Exceed 10%)

An upward redefinition occurs when a position is reclassified as the result of accretion of higher level duties on the part of the incumbent. The salary is adjusted as documented in the LDSS's compensation plan. The percentage increase is the same for all employees during the fiscal year.

(5) Merit Increase

A plan for awarding a merit increase must define the criteria for approving the salary increase as defined in the LDSS's local compensation plan~~Compensation Plan~~ to include the interval of time between each award period.

(a) Merit Increase Options:

1. one merit increase date applies to all employees, or

2. the merit increase date is set by the LDSS for its employees based on a date such as

   a. the anniversary of the initial appointment
   b. anniversary of permanent status
   c. anniversary of most recent promotion

(6) Cost-of-Living Increase

If the cost-of-living- option is selected, then it must be clearly stated in the compensation schedule. A cost-of-living increase is separate and apart from any other salary increase. Cost of living increases must be consistently and uniformly applied to all employees of the LDSS. A cost-of-living increase does not require a corresponding salary range revision.

(7) Range Revisions (also see "Selection of Ranges")

When warranted and with prior approval from VDSS HR~~HRM~~, an~~a~~ LDSS may adjust a position's minimum pay upward using a Range Revision process. The local director should notify VDSS HR before starting the range revision process. The LDSS with guidance from VDSS HR is responsible for gathering all necessary documentation to support the request.

A range revision may be granted on the basis of:

- Market study
- Lack of qualified applicants
- Competition from other employers in the locality
- Turnover rate

Complete documentation that demonstrates the basis for the range revision and the proposed salary range(s) must be attached to the local compensation plan in the year the range revision will take place.

Salaries of employees in the affected positions/Occupational Title(s) may be adjusted as follows:

(a) Employee salaries that fall below the new minimum must be increased to the new minimum.

(b) Employee salaries that are at/above the new minimum may be adjusted by a percentage equal to the percentage adjustment of the new minimum.

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(8) Demotion Salary Rates

The five types of demotion salary rates are:

(a) Demotion in Lieu of Layoff Due to a Reduction in Force

When an employee is moved to a position in a lower band or a lower tier in the same band within the LDSS due to a reduction in force, the salary rate remains the same, provided the rate of pay does not exceed the new salary range maximum. If the employee's current salary is above the new salary band maximum, the current salary is frozen for six months before being reduced to the maximum of the new salary range.

(b) Demotion Due to Downward Redefinition

When an employee is in a position~~poison~~ that is redefined to a lower band or a lower tier in the~~he~~ same pay band, the salary rate remains the same. If the employee's current salary is above the new salary band maximum, the current salary is frozen for six months before being reduced to the maximum of the new salary range.

(c) Voluntary Demotion (Competitive)

If an employee applies for and accepts a position in a lower pay band or a lower tier in the same pay band within the same LDSS, the resulting salary is set based on the methodology indicated for starting pay in the LDSS's local compensation plan. The new salary cannot be greater than the salary range maximum and cannot be greater than the current salary.

(d) Demotion due to Unacceptable Performance

If an employee's performance is not acceptable, the employee may be moved to another position in a lower band or a lower tier in the same band. The current salary is reduced by 5 percent for each tier moved – not to exceed 15 percent overall (unless the resulting salary is above the band maximum for the new position).

(e) Demotion for Disciplinary Reasons

If, for disciplinary reasons, an employee is moved to another position in a lower band or a lower tier in the same band, the current salary is reduced by 5 percent for each tier moved – not

to exceed 15 percent overall (unless the resulting salary is above the band maximum for the new position).

(9) Internal Salary Alignment (Not to exceed 10% per fiscal year)

Internal salary alignment is a fairness criterion that takes into consideration the proximity of an~~ones~~ employee's salary to the salaries of other similarly situated employees on such factors as experience, training, duties and responsibilities, performance, knowledge/skills/abilities, and competencies.

LDSS electing to implement this pay practice must document the criteria for awarding such adjustments in their local compensation plans.

(10) Temporary/Acting Pay

An~~A~~ LDSS may grant temporary pay to any employee who performs different key (essential) duties on an interim basis or is assigned to a critical, time-limited project, not to exceed 10 percent of base pay. One percentage amount applies to all employees. In addition, if the employee assumes new or increased supervisory responsibility in addition to the other interim duties, then a greater percentage amount may be granted, not to exceed 10 percent of base pay overall. The percentage(s) must be documented in the LDSS local compensation plan.

(11) Salary Adjustment for Attainment and/or Use of a Critical Skill

LDSS may elect to grant increases to base salaries of employees who have acquired critical skills now being exercised as part of their regular job duties. Examples include attainment of licensures, certifications, degrees, and bilingual skills that are relevant to and applicable to the job where there is no change in position responsibilities, occupational title, pay band or tier.

Current salaries can be increased by no more than 10 percent; new salaries must fall within the current position salary range. The LDSS must document the skills eligible for such increases and the percentage amount associated with each in its local compensation plan.

Note: If the use of these skills was already factored in the determination of an employee's starting salary or most recent promotional increase, this practice should not be exercised for the employee.

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(12) Competitive Salary Offer (Counteroffer)

~~If the employee is deemed critical to the LDSS's missions and operations,~~ An~~a~~ LDSS may elect to make a counteroffer to an employee who has received a verified, higher salary offer for a position in another Virginia LDSS, a Virginia state agency (including VDSS), or a private-sector employer. The following conditions apply:

- Counteroffers are completely discretionary on the part of the LDSS for each employee and each offer and should be based on bona fide business need;
- Only one counteroffer may be made per~~for~~ offer;
- Counteroffer salary is not to exceed offered~~offer~~ salary; and
- Counteroffer salary is not to exceed current position's~~sposition~~ pay band maximum.

(13) End of "Trainee" Status (Not to Exceed 5%)

In certain designated Occupational Groups, an~~a~~ LDSS may establish a career path for Occupational Titles within that group. The LDSS must develop an End of Trainee (EOT) plan that identifies criteria that must be met by the trainee.

The first level in the career path is designated as a trainee level. After successful completion of the training period, the employee is eligible to move to a higher level in the Occupational Group (in most cased to level II). The LDSS may elect to give salary increases for such movement as indicated in the LDSS compensation plan.

Note: For administrative purposes, the employee will be in the same-numbered position, but the position and employee will need to be administratively redefined.

(14) Amendments to the Basic State Compensation Plan

Amendments to the Basic State Compensation Plan are sent to VDSS HR~~HRM~~. VDSS HR~~HRM~~ advises the LDSS of all changes to the compensation plan and any mandated actions that require revision of local salaries.

G. On Call Compensation~~ for Child Protective Service Workers~~

1. Covered Employees

Employees who perform adult and/or child protective services must be knowledgeable in adult and/or child protective services policy requirements and

have competed appropriate training. Covered employees may include individuals assigned to the following Occupational Groups:

a. Social Service Directors

b. Family Services Specialists (including Managers and Supervisors)

2. LDSS On-call~~Child Protective Services~~ Compensation Plan

The On-call~~after-hours Child Protective Services~~ compensation policy is included within the LDSS's annual compensation plan. Reimbursement by VDSS~~the State Department of Social Services~~ is limited to the maximum rate allowed; however, the LDSS may provide additional compensation if the additional dollars are available from non-VDSS sources.

a. Compensation for ~~Being~~ On-Call Duty

(1) The local~~LDSS's~~ board determines the type of supplemental compensation to be given to an employee for being assigned on-call duty.

The local~~LDSS~~ board may select one of the following options:

- Providing monetary~~cash~~ compensation in a lump sum amount not to exceed $16.00~~$10.00~~ per each 8 hour on-call shift~~assignment~~, or
- Providing monetary compensation equivalent to one hour of compensation at the employee's normal rate of pay.

The local board may allow the local director on a case by case basis to substitute:

- Providing one hour of special duty leave per each on-call assignment.
- ~~Exercising either of the above option as on a case-by-case basis.~~

(2) This supplemental compensation is given for the inconvenience of being on-call; it is in addition to any compensation or overtime compensation that may be earned for actual hours worked.

b. Compensation for Providing Direct Service While On-Call Duty

(1) The LDSS's board determines the type of compensation to be given to employees involved in providing direct service while on-call. If an employee is called out for direct services while on-call, the following options apply:

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(a) For employees who are exempt from the Fair Labor Standards Act or non-exempt employees who have actually worked fewer than 40 hours in that work week (including the direct service hours while on-call), the LDSS has the option of:~~–~~

- Compensating at the regular salary rate for each hour actually worked while on-call, or
- Providing special duty leave for each hour actually worked while on-call, or
- Exercising either of the above options on a case-by-case basis.

(b) For employees who are non-exempt under the Fair Labor Standards Act and who have actually worked in excess of 40 hours in a work week when the on-call services delivery hours are added to the actual hours worked, the LDSS has the option of:~~–~~

- Providing overtime payment at time-and-one-half the regular hourly rate for each hour of direct services in excess of 40 hours in the work week, or
- At the option of the local director and prior to overtime hours worked,~~Providing~~ a non-exempt employee may elect to receive compensatory leave at time-and-one-half for each hour of direct services in excess of 40 hours in the work week.~~, or~~
- ~~Exercising either of the above options on a case-by-case basis.~~

(c) Compensation for Provision of 24-Hour Adult and/or Child Protective Services by the Local Director and Supervisory Staff:~~–~~

The local board determines if the local director will be one of the employees designated to provide 24-hour direct adult and/or child protective services. If designated, the local director is entitled to the same compensation as provided to other exempt employees who provide the service.

H. Other Local Compensation Issues

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1. Local-Only Reimbursement When the Local Director Serves as the Local Board

   When the local director serves on the local board, the director may receive up to $3,000 in additional compensation for board services. Per the provisions of Code of Virginia §63.2-310, this~~This~~ supplemental compensation is paid~~always must come~~ out of local only funds. The $3,000 supplemental pay~~payment is not added to the Director's salary~~ is not eligible for reimbursement. ~~In this case, the normal reimbursement figure (or the reimbursable maximum in deviating agencies) will be reduced by $3000.~~

2. Court Service or Required Attendance at Administrative Hearings~~Tribunal Service~~

   When an employee is called for jury duty or is subpoenaed in a case (provided the employee is not a party), the court reimburses the employee for expenses. This money, which generally is a fixed amount, is not to be offset from the employee's wages. Per the provisions of Code of Virginia §18.2-465.1~~Under state law~~, an employee cannot be made to use accrued leave or have a deduction from wages/salary. An employee may choose to surrender any compensation received for jury duty or court service and use available leave such as civil or accrued annual leave instead.

   If an employee is compensated for his services as ~~as~~ witness on a matter that does not arise out of his or her employment, the compensation received is to be deducted from wages/salary if the employee does not choose to use accrued paid leave. Note: Nominal~~nominal~~ witness fees are reimbursements and not compensation. ~~Generally, only expert witnesses receive compensation.~~

3. Reimbursement for Overtime

   Reimbursement is made for overtime payment in accordance with the Fair Labor Standards Act (FLSA). The reimbursement is paid up to the reimbursable maximum of the applicable position classification. An~~A~~ LDSS with an approved deviating compensation plan also will be reimbursed up to the maximum of the applicable position classification. When the local deviating maximum exceeds the State reimbursable maximum, local-only funds are used to compensate for funds expended.

4. Responsibility for Maintenance of the Local Schedule and Compensation Plan ~~and Schedule~~

   Maintenance of the local schedule and compensation plan is the shared responsibility of the local board, the local director, the State Board~~ of Social Services~~, and VDSS HR~~HRM~~.

   (a) State Board's~~State Board of Social Services~~ Responsibility: -

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The State Board~~ of Social Services~~ approves the State classification and compensation schedule and plan.

(b) Local Board's Responsibility: -

The local board approves and adopts the local compensation plan subject to final approval by VDSS HR~~HRM~~.

(c) Local Director's Responsibility: -

The local director grants salary increase in accordance with the local compensation plan.

(d) VDSS HR's Responsibility:

VDSS HR~~HRM~~ approves the local compensation plans.

5. Sanctions

Actions taken by the LDSS are subject to review and audit for determining conformity to the compensation plans. When VDSS~~the Department of Social Services~~ finds that non-compliance or inappropriate actions have occurred, sanctions may be imposed and/or reimbursement of funds withheld until such time as deemed necessary for the proper administration of the local compensation plan.

I. Deviations from the Basic State Classification and Compensation Plan or Deviation from the Basic State Compensation Plan

1. Process for Requesting Approval to Deviate from the Basic Plan(s)

LDSS may follow the compensation or the classification/compensation systems off~~or~~ their local jurisdiction. If one of these options is selected, the system must apply to all governmental employees within a given jurisdiction.

State Board approval is required before an~~a~~ LDSS may follow local systems. Such actions are known as "deviations." The local jurisdiction's administrative or human resource office is responsible for integrating (and subsequently maintaining) the LDSS into the local jurisdiction's system(s).

a. Basis for Submission of an Initial or Subsequent Request to Deviate

(1) A written request, discussing the rationale for the request for deviation, is submitted to VDSS HR~~DHRM~~.

b. Justification and Documentation Provided with Initial and/or Subsequent Deviation Requests

(1) The local jurisdiction provides the following documentation, depending upon the type of request:

(a) Classification and Compensation Deviation Request -

(i) A written request must be submitted to VDSS HR~~HRM~~ 60 days in advance of the proposed effective date of deviation. A plan for implementing the change must be provided. The plan must explain how employees' class specifications and salaries will be used to convert positions and employees from the current plan to the proposed new one.

(ii) All applicable Occupational Title Descriptions to be used in the LDSS must be provided.

3. A list of all locality classifications and their position ranges must be provided.

4. All present and proposed salary ranges, a plan for implementing the new salary ranges, and an estimate of the cost of making the changes must be submitted to VDSS HR~~HRM~~. The new schedule must be submitted at least 60 days prior to the implementation date. All salary minimums must equal or exceed those applicable job classifications in the VDSS Basic Compensation Schedule for local departments. Any other procedures pertaining to the setting and revising of salaries should be included.

5. Applicable portions of Parts A, B and C~~B~~ of the Jurisdiction-Wide (JW) Self-Analysis Form~~Audit Questionnaire~~ must be completed and submitted.

6. Any study documents or reports indicating how conclusions were reached must be submitted. Also, a statement as to how the locality designates equivalent job classes must be provided.

7. Other items to be submitted include promotion and demotion policies and the plan for compensating employees whose class specification falls in the child protective services series.

(b) Compensation-Only Deviation Request -

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(i) A written request must be submitted to VDSS HR~~HRM~~ 60 days in advance of the proposed effective date of deviation. The request should include an explanation as o why the deviation is needed. Special consideration should be given to the range revision option as an alternative to deviating in compensation only.

(ii) A plan for implementing the change must be provided. The plan must explain how employees' salaries will be converted from the current plan to the proposed new one.

(iii) All present and proposed salary ranges, a plan for implementing the new salary ranges, and an estimate of the cost of making the changes must be submitted to VDSS HR~~HRM~~. The new schedule must be submitted at least 60 days prior to the implementation date. All salary minimums must equal or exceed those in the Basic State Compensation Plan.

(iv) Applicable portions of Part C~~B~~ of the JW Self-Analysis Form~~Audit Questionnaire~~ must be completed and submitted.

(v) Other items to be submitted include promotion and demotions policies and the plan for compensating employees who have child protective services duties.

(c) Validation of Knowledge, Skills, and Abilities (KSAs) -

It is the responsibility of the locality to validate the entry-level and full-performance knowledge, skill, and ability (KSA) statements for all deviating classifications. Entry-level KSAs are the desired and/or required qualifications for entry into a position. An applicant for employment may acquire entry-level KSAs through education, experience, and/or training. Entry-level KSAs are used in job postings (advertisements). Full performance KSAs provide a clear indication of what is needed in order to function fully in a position.

(d) Evaluation and Approval of Deviation Requests -

(i) Upon receipt of all required documentation, VDSS HR~~HRM~~ staff reviews and evaluates the deviation request. As part of the evaluation process, VDSS

HR~~HRM~~ compares the proposed classification to existing state classifications (Occupational Titles) and corresponding salary ranges.

When necessary, VDSS HR~~HRM~~ staff meets with the jurisdictional employee responsible for coordinating information with VDSS HR~~HRM~~. Meetings also may be held with consultants, human resource officers, local directors, and independent contractors. The LDSS may not implement a new deviation or make changes to an existing deviation plan without prior VDSS HR~~HRM~~ and State Board approval.

(ii) One of the primary factors taken into consideration by VDSS HR~~HRM~~ when deciding whether or not to approve the deviation request is the local jurisdiction's ability to provide support services. There should be a designated human resource office with the capability of reviewing, revising, and maintaining adequate systems that will enable operations to function smoothly and equitably and be responsive to the needs of the local jurisdiction.

(iii) If VDSS HR's~~HRM's~~ evaluation is favorable, VDSS HR~~HRM~~ will submit a recommendation for approval to the State Board ~~of Social Services~~.

(iv) VDSS~~The Department of Social Services~~ reserves the right to disapprove any proposed actions that are incongruent with the policies and procedures that protect all local employees.

(v) In no case shall an~~a~~ LDSS compensate any employee below the minimum salary rate for any corresponding state classification. For reimbursement purposes, all salaries shall be limited to the maximum of the State applicable range for the comparable classification. However, the locality may use local-only funds to compensate employees above the range maximum.

(e) Financial Responsibility -

Per the provisions of Code of Virginia §63.2-330~~For any compensation-related deviation~~, the locality absorbs all costs associated with the deviation. State funds are not available for these purposes.

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Section II
Fair Labor Standards Act (FLSA)

Purpose

The purpose of this policy is to provide guidelines for implementing the provisions of the Fair Labor Standards Act (FLSA).

Scope

This policy applies to all employees.

A. Definitions

1. Compensatory Leave

   Paid time off which non-exempt employees may receive in lieu of overtime pay.

2. Department of Labor (DOL)

   The U.S. Department of Labor is the federal agency in charge of enforcing the FLSA.

3. Fair Labor Standards Act

   The Fair Labor Standards Act of 1938 (FLSA) is a federal statute which establishes minimum wage requirements and provisions for overtime pay, provisions for compensatory time, child labor, equal pay, and recordkeeping.

4. Joint or Dual Employment

   An employment situation that arises when an employee performs separate jobs for the same employer; these jobs may be at the same or different rates of pay. The total hours worked in these separate jobs are aggregated for purposes of computing hours worked.

5. Exempt Employee

   A salaried employee who because of the nature of the job duties performed is not subject to the overtime provisions of the FLSA and therefore not entitled to overtime pay.

6. Hours Worked

   Hours that an employee actually works.

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7. Minimum Wage

   Minimum hourly rate that an employee must receive for work performed; that rate is established by federal and state law. The minimum wage requirements do not apply to exempt employees.

8. Non-Exempt Employee

   An employee who is entitled to overtime pay for the hours worked over forty in a workweek.

9. On-Call

   Being available to work upon the call of the LDSS generally, with some restrictions on the employee's movement and activities.

10. Regular Rate of Pay

    The average hourly rate of pay for an employee.

11. Retaliation

    Adverse actions (discharge, unfair or discriminatory pay practices or other inequitable terms and conditions of employment) taken against an employee who has filed a lawsuit under the FLSA, instituted any proceedings under the FLSA, testified or agreed to testify in a proceeding instituted under the FLSA, or otherwise has asserted a right or opposed a practice under the FLSA.

12. Salary

    The predetermined amount of compensation that an employee receives regularly on a weekly or less frequent basis which is not subject to reduction because of the quality or quantity of the work performed.

13. Workweek

    A fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods that is established by the LDSS; the workweek may be uniform for all employees or it may differ for different positions or employees. The workweek does not have to coincide with the calendar week, but instead it may begin on any day of the week and at any hour of the day. The LDSS establishes the workweek for each position.

B. Hours of Work

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1. Definition of Work

All hours that an employee is required, or permitted, to engage in activities that involve mental or physical exertion on behalf of or for the benefit of the LDSS. This includes all time that the employee is required to be on the premises of the LDSS or at some prescribed place (e.g., home visits or court) or that an employee is required or permitted to work (e.g., working at home or staying after hours at the office).

2. All Work Must be Counted as Hours Worked

The general rule is that if the LDSS knows or has reason to believe that an employee is performing work, the time must be recorded as hours worked whether the employee volunteered to perform the work or was just dropping something off on the way home. Accordingly, employees cannot "volunteer" their time to perform extra duties or duties outside normal work hours without reporting them as hours worked.

a. Work Activities

Activities that are generally considered "work" may include:

(1) Waiting time if the employee cannot~~can not~~ use the time effectively for his or her own purposes such as when an employee is not relieved of all duties (e.g., "listen for the phone while you are waiting");

(2) Rest or break periods of 15 minutes or less~~ than 20 minutes~~;

(3) Meal breaks of less than 30 minutes;

(4) Time the employee sleeps while on duty provided that it is less than 24 hours in a day;

(5) Pre-shift and post-shift activities required by the LDSS;

(6) Required training;

(7) LDSS required medical examinations;

(8) Grievance activity;

(9) Time actually worked while on call; and

(10) All activities performed for the benefit of the employer during regularly scheduled hours (e.g., travel to work locations or training). Note: that a determination is always very fact specific and broad generalizations as to what time is compensable cannot be made lightly.

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b. Non-work Activities

Activities that are related to a job but are not considered work include:

(1) Time spent in civic and charitable activities (if not under the employer's request or direction);

(2) Voting time;

(3) On-call time if the employee's activities while on call are not unduly restricted;

(4) Home to work travel;

(5) Time spent waiting to work; and

(6) Breaks of longer than 15~~20~~ minutes and meal breaks longer than 30 minutes if the employee is completely relieved of all duties.

c. Volunteered Labor

As well intended as it may be, a non-exempt employee cannot~~should not~~ "volunteer" time to work beyond scheduled work hours. Nor should an employee change the hours worked without permission of the supervisor.

3. Hours Actually Worked

Hours actually worked do not include time spent in non-compensable activities such as on-call or rest times~~time~~ or break periods of more than 15 minutes. It also does not include the following special situations:

a. Occasional and Sporadic Work for Same LDSS

All employment for the same LDSS, whether in one or more capacities, counts towards the hours worked. For public employers there is an exception when the additional work is part-time, occasional or sporadic, is different than the primary work, and done on a voluntary basis–e.g., a family services specialist being hired by the county recreation program to referee sporting events or to drive the school bus for a field trip.

b. Lectures and Training Time

If the time is outside normal work hours and the program is not directly related to the employee's job, such time will not count as hours worked provided that attendance was voluntary and no work for the LDSS was performed.

c. Paid Time Off

Paid time off does not count as hours worked.

4. Travel Time

Time expended during the regular work schedule in travel and any time during which the employee is performing work, including the "work" of driving, must be counted as hours worked for both minimum wage and overtime computation purposes.

a. Travel During Work Hours

Travel and related activities on regular working days during normal working hours as well as travel and related activities occurring during corresponding hours on non-working days is work time.

Example: If an employee's regular work hours are from 9 a.m. to 5 p.m., Monday through Friday, travel time spent between 9 a.m. and 5 p.m. on any day of the week, including Saturday and Sunday, must be considered as hours worked.

b. Overnight Travel

When attending a meeting or business function overnight, only the hours that correspond to normal working hours and any additional time spent in meetings or business functions are counted as hours worked. Meals, receptions, social events are not hours worked unless attendance is required or work is performed.

(1) Travel time away from home which occurs outside regular working hours is not counted as hours worked if the employee is a passenger on an airplane, train, boat, bus, other common carrier, or as a passenger in an automobile.

Example: If a non-exempt employee who normally works 9:00 a.m. to 5:00 p.m., Monday through Friday, is required to travel by plane on Sunday night in order to be at an out-of-town meeting on Monday morning, the travel time is not counted as hours worked.

(2) If a non-exempt employee elects to drive to an overnight assignment instead of using offered public transportation, the LDSS has the option of counting as hours worked the lesser of the actual time spent by the employee in driving or the time that would have been expended if the employee used public transportation.

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5. Recording Hours Worked

It is the responsibility of the LDSS to record all time actually worked and to maintain the records required under the FLSA. Although the LDSS can require the non-exempt employee to record his or her hours worked, the employee's failure to do so does not relieve the LDSS of the responsibility to record such time. Hours worked may be recorded in as small an increment as time records are kept; e.g., by fifteen minutes. Rounding to the nearest increment is permissible, provided it is done consistently in the same manner.

C. Overtime (see Section III for FLSA exemption information)

1. Overtime~~Premium~~ Pay

For each hour worked over forty in a workweek, a non-exempt employee receives overtime~~premium~~ pay in the amount of 1.5 times the regular rate of pay. An exempt employee is not entitled to overtime pay or compensatory time.

2. Calculating Regular Rate of Pay

The regular rate of pay equals the employee's total weekly pay divided by the total hours worked. If an employee is paid an hourly rate, that regular rate is generally the same as the hourly rate; but if additional compensation is provided, e.g., extra payment for being on call, that compensation must be added to the total weekly compensation.

For salaried employees, the regular rate of pay is the salary divided by the number of hours that the salary is intended to compensate. The FLSA allows other methods of compensation, such as a fixed salary for fluctuating hours of work, that would affect~~effect~~ the amount of the regular rate of pay. If an LDSS has a lot of overtime, these alternative methods of salary payments may be used.

3. Compensatory Time

At the option of the local director~~LDSS~~ and prior to overtime hours worked, a non-exempt employee may elect to receive compensatory time in lieu of overtime pay. Compensatory time is earned at the same rate as overtime pay--1.5 hours for each hour of overtime worked.

D. Exempt Status

1. The FLSA exempts certain employees, and provides partial exemptions to others (e.g., firefighters, ~~and~~ law enforcement personnel, and hospital workers), from the overtime and minimum wage provisions of the Act. Although an employee may perform duties that would allow them to be exempt, an LDSS may for any reason elect to treat the position as non-exempt.

2. Employees may be exempt from overtime and minimum wage under one of the three "white collar" exemptions: executive, administrative, and professional employees. There are three requirements for meeting one of the white collar exemptions:

   a. The employee must be paid a salary of at least $455 per week.

   b. Deductions from the salary for quantity or quality of work, or for less than full day disciplinary suspensions are not allowed.

   c. The duties performed must comply with the regulations for each exemption. Job titles are not determinative of exempt status; actual job duties are the sole determinative.

E. Violations

An employee who believes that the LDSS has taken an action or has a practice that violates the FLSA, may bring a complaint to the local director~~Director~~. That complaint will be investigated and if it should be determined that an error or illegal practice has occurred, a correction will be made. Any compensation that may be due the employee will be promptly paid. Employees are protected against retaliatory actions when bringing such a complaint. A non-probationary employee may also initiate a grievance to challenge a violation of the FLSA.

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Section III
Guidance for Determining FLSA Exemption Status of Employees

The Fair Labor Standards Act, as amended, provides an exemption from minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative, or professional capacity. The Act also provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees.

A. Responsibilities

It is the responsibility of each local director~~LDSS~~, in consultation with their local board, to determine whether employees are exempt or non-exempt under the Act and including provisions for employees of public agencies (see Chapter 2, Section III.E.5).

A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the Act.

The following is presented as guidance for purposes of assisting LDSS agencies.

B. Tests for Determining Exemption under FLSA

1. Summary Requirements

   a. The employee must be paid on a salary or fee basis.

   b. The salary level must equate to at least $455.00 per week.

   c. The job's "primary duties" must be the performance of exempt work.

2. Salary Basis

   As a general rule, an employee is considered to be paid on a "salary basis" within the meaning of the regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Typically, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

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Exceptions: The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

a. Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.

b. Deductions from pay may be made for absences occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for partial day absences for which the employee does not receive compensation under the plan, policy or practice (e.g., leave without pay status). Deductions for such absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance hereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence (or sick leave benefits), the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan (or has accrued sick leave); for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for partial day absences if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.

c. While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

d. Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.

e. Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a

written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.

f. An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

g. An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

C. Primary Duty - Exempt Employee

An employee's "primary duty" must be the performance of exempt work. The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of non-exempt work performed by the employee.

1. The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50 percent of their time performing exempt work. Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion.

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2. Thus, for example, assistant managers in a retail establishment who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget and authorizing payment of bills may have management as their primary duty even if the assistant managers spend more than 50 percent of the time performing nonexempt work such as running the cash register. However, if such assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers generally would not satisfy the primary duty requirement. The position description and the performance evaluation are two primary documents to support what activities are deemed to be primary.

D. Exempt Status

1. General Rule for Executive Employees

   a. Compensated on a salary basis at a rate of not less than $455 per week, exclusive of board, lodging or other facilities;

   b. Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

   c. Who customarily and regularly directs the work of two or more other employees; and

   d. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

2. General Rule for Administrative Employees

   a. Compensated on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging or other facilities;

   b. Whose primary duty is 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

   c. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

3. General Rule for Professional Employees

   a. Compensated on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging, or their facilities; and

   b. Whose primary duty is the performance of work:

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or

(2) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

4. General Rule for Computer Employees

a. Exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than $455 per week, exclusive of board, lodging or other facilities, and the exemption applies to any computer employee compensated on an hourly basis at a rate not less than $27.63 an hour. In addition, under the Act, the exemptions apply only to computer employees whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(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;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

5. Highly Compensated Employees

a. An employee with total annual compensation of at least $100,000 is deemed exempt under the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee.

b. "Total annual compensation" must include at least $455 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. Total annual compensation does not include board, lodging and other facilities, and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits.

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c. This area of the Act applies only to employees whose primary duty includes performing office or non-manual work. Thus, for example, non-management production-line workers and non-management employees in maintenance, construction and similar occupations is not applicable.

E. Discussion of Some Terminology Used Throughout the Act

1. Customarily and Regularly

The phrase "customarily and regularly" means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

2. Directly and Closely Related to~~To~~ Management or General Business Operations

Work that is "directly and closely related" to the performance of exempt work is also considered exempt work. The phrase "directly and closely related" means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, "directly and closely related" work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's exempt work cannot be performed properly. Work "directly and closely related" to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not "directly and closely related" if the work is remotely related or completely unrelated to exempt duties.

3. Use of Manuals

The use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption under the Act or where such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exempt status. Exemptions are not available, however, for employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

4. Trainees

The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive,

administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales or computer employee.

5. Employees of Public Agencies

An employee of a public agency who otherwise meets the salary basis requirements shall not be disqualified from the exemption on the basis that such employee is paid according to a pay system established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:

a. Permission for its use has not been sought or has been sought and denied;

b. Accrued leave has been exhausted; or

c. The employee chooses to use leave without pay.

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

6. "Customarily Recognized Department or Subdivision"

The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function.

7. Two or More Other Employees

To qualify as an exempt executive, the employee must customarily and regularly direct the work of two or more other employees. The phrase "two or more other employees" means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.

8. Particular Weight

To determine whether an employee's suggestions and recommendations are given "particular weight," factors to be considered include, but are not limited to, whether it

is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have "particular weight" even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

9. Concurrent Duties

Concurrent performance of exempt and nonexempt work does not disqualify an employee from the executive exemption if the requirements are met. Generally, exempt executives make the decision regarding when to perform nonexempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. In contrast, the nonexempt employee generally is directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent or repetitive tasks cannot qualify for exemption as an executive.

10. Discretion and Independent Judgment

To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.

The phrase "discretion and independent judgment" must be applied in light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the

company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term "discretion and independent judgment" does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

F. FLSA Recordkeeping Requirements

The FLSA requires employers to keep records on wages, hours, and other items; these records do not have to be kept in any particular form and time clocks are not required to be used.

1. The Following Records Must Be Kept for Non-Exempt Employees

   a. When non-exempt employees are not on a fixed and regularly recurring work schedule:

      - personal information, including employee's name, home address and zip code, occupation, sex, and birth date if under 19 years of age;
      - hour and day when workweek begins;
      - hour and day when workweek ends;
      - total hours worked each workday and each workweek;
      - total daily or weekly straight-time earnings;

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- regular hourly pay rate for any week when overtime is worked;
- total overtime pay or compensatory time for the workweek;
- deductions from or additions to wages;
- total wages paid each pay period ;
- date of payment and pay period covered; and
- amount and nature of each payment excluded from regular rate of pay.

b. If a non-exempt employee is on a fixed work schedule the following simplified record keeping process may be used: records of daily and weekly hours worked are not required if the employer shows the fixed schedule of daily and weekly hours and indicates on the weekly time sheet either:

- that a check mark for the days and weeks that the schedule was adhered to; or
- for the weeks that the schedule was not adhered to, the record shows the exact number of hours worked each day and each week.

2. <u>The Following Records Must be Kept for Exempt Employees</u>

a. personal information, including employee's name, home address and zip code, occupation, sex, and birth date if under 19 years of age;

b. hour and day when workweek begins;

c. hour and day when workweek ends;

d. total hours worked each workday and each workweek;

e. total wages paid each pay period;

f. date of payment and the pay period covered by each payment;

g. the basis on which wages are paid with sufficient detail to calculate total remuneration received including fringe benefits, e.g., $3,500 per month plus retirement and health plan coverage; and

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G. Comparison of Compensatory and Special Duty Leave

Policy Aspects	Special Duty Leave	Compensatory Leave
Employees to whom policy applies:	All employees.	Employees who are non-exempt.
Definitions:	Paid time off for an employee who has worked additional hours in a workweek, on an official office closing day, holiday, scheduled day off, or when a holiday falls on an employee's scheduled day off.	Paid time off for a non-exempt employee who actually works more than 40 hours in a workweek.
Purpose:	To provide additional compensation to employees who have worked additional hours in a workweek.	To compensate non-exempt employees with paid leave in lieu of overtime pay for working more than 40 hours in a workweek.
Number of hours worked in order to be eligible for leave:	N/A	More than 40 hours in a workweek
Rate of leave accrual:	Hour-for-hour basis	One and one-half hours for each hour or part thereof worked over 40 in a workweek
Duration of leave accruals:	Expires~~Lapses~~ within 12 months from the date it is earned.	Does not expire~~lapse~~
Maximum amount of leave accrual:	No maximum amount.	240 hours (or lesser limit, if established by LDSS)
Authorizations for leave accrual:	An employee must have agency approval, in writing, before earning special duty leave.	An employee must receive approval from the agency regarding the scheduling/working of overtime hours. However, if the overtime hours are worked, the employee must be compensated.
Payment on termination:	For special duty leave that has not lapsed, full lump sum payment.	Full lump sum payment
Payment when moving to different LDSS	For special duty leave that has not lapsed, full lump sum payment.	Full lump sum payment
Payment when moving to different position, same LDSS:	No payment. Employee will retain his/her accrued leave.	No payment. Employee will retain the accrued leave

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Policy Aspects	Special Duty Leave	Compensatory Leave
Payment upon employee's death:	Lump sum payment to the administrator or the executor of the employee's estate.	Lump sum payment to the administrator or the executor of the employee's estate
Rate of payment:	Special duty leave must be paid at the employee's ending average hourly pay rate.	Compensatory leave balances must be paid at the employee's ending hourly pay rate or the employee's average hourly pay rate over the last three continuous years of employment, whichever is higher

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H. Computing Compensatory and Special Duty Leave

Scenario 1: A non-exempt salaried employee worked the following schedule during the workweek September 1– September 7. Monday was a holiday (Labor Day), and the employee did not work any hours on that day. The employee's timesheet would look as follows:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	Holiday 0	8	8	8	8	0	0	32

Compensation calculation: 32 hours were actually worked; accordingly the employee would receive full salary for that week because Monday was a holiday.

Scenario 2: A non-exempt salaried employee worked the following schedule during the workweek of September 1- September 7. The employee actually worked 8 hours on the holiday. The employee's timesheet would look as follows:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	8	8	8	8	8	0	0	40

Compensation calculation: 40 hours were actually worked. Accordingly, the employee would receive full salary plus 8 hours of special duty leave for working on the holiday.

Scenario 3: A non-exempt salaried employee worked the following schedule during the workweek September 1 – September 7. The employee actually worked 8 hours on the holiday. In addition, the employee was on call on Saturday and Sunday and was called out for 2 hours on each day. The employee's timesheet would look as follows:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	Holiday 8	8	8	8	8	2	2	44

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Compensation calculation: 44 hours were actually worked; accordingly the employee would receive full salary for Monday through Sunday and 8 hours of special duty leave for working on Monday, a holiday. In addition, the employee worked 4 hours of overtime. Six hours of overtime compensation would also be due (pay or compensatory leave at the rate 1.5 hours for each hour actually worked).

Scenario 4: A non-exempt salaried employee worked the following schedule. There are no holidays in this particular workweek. The employee's timesheet would look like the following:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	8	8	8	8	8	0	0	**40**

Compensation calculation: The employee actually worked 40 hours and therefore would be entitled to full salary.

Scenario 5: A non-exempt salaried employee worked the following schedule. The employee called in sick on Monday and worked eight hours on the weekend. The employee's timesheet would look as follows:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	Sick 8	8	8	8	8	4	4	**40**

Compensation calculation: 40 hours were actually worked; accordingly, no overtime compensation is owed. Because the employee worked 8 hours on the weekend, 8 hours of special duty leave, or straight time compensation, is owed for these hours worked.

Scenario 6: A non-exempt salaried employee worked the following schedule. There are no holidays in this particular workweek and the employee did not use any sick or annual leave. The employee's timesheet would look like the following:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	8	8	8	8	8	4	4	48

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Compensation calculation: 48 hours were actually worked; accordingly, the employee is to receive full salary plus 12 hours of overtime compensation (either pay or compensatory leave calculated at 1.5 hours for each hour worked - 8 overtime hours equals 12 hours of compensation).

I. Certification of Exempt Employees

Each LDSS must submit to VDSS HR~~DHRM~~ a certification that all positions have been reviewed to determine whether the positions within the agency are exempt from the FLSA overtime requirements.

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Section IV
Compensatory Leave

Purpose

The purpose of this policy is to provide procedures for earning and accumulating paid leave which is given in lieu of payment for overtime hours worked.

Scope

This policy applies to all non-exempt employees who are entitled to overtime compensation for hours worked.

A. Definitions

1. Exempt Employee

   An employee who is not subject to the overtime ~~or minimum wage~~ provisions of the Fair Labor Standards Act (FLSA). Exempt employees are bona fide executive, administrative, computer, or professional employees paid on a salaried basis.

2. Non-Exempt Employee

   An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

3. Overtime

   Hours actually worked over 40 hours in a 7 day work period. Paid time off does not count as hours worked.

4. Compensatory Leave

   Paid time off given in lieu of cash payments.

5. Workweek

   A fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods~~day period~~ that is established by the LDSS; the workweek may be uniform for all employees or it may differ for different positions or employees. The workweek does not have to coincide with the calendar week, but instead it may begin on any day of the week and at any hour of the day. The LDSS establishes the workweek for each position.

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B. Purpose of Compensatory Leave

1. Eligibility

   A non-exempt employee who actually works more than 40 hours in any work week may elect to receive compensatory leave instead of overtime compensation with approval of the employee's supervisor.

2. Alternative to Cash Payment

   Compensatory leave is given in lieu of a monetary~~cash~~ payment for overtime compensation.

3. Agreement to Receive Compensatory Leave

   Agencies using compensatory leave rather than monetary~~cash~~ payments must obtain the written agreement of the employee prior to the performance of the overtime work. The agreement must state that compensatory leave will be received in lieu of overtime pay, that compensatory time may be used, preserved, or cashed out by the LDSS, and that no more than 240 hours (or fewer hours if such limit was established by the LDSS) of compensatory leave may be accrued at any period of time. Once an employee has accrued 240 hours of compensatory leave, the employee must receive pay for additional hours worked.

4. Overtime Hours Worked Require Approval by the Supervisor

   Employees are not expected to work beyond their scheduled hours without the prior approval of a supervisor.

   a. If for any reason, an employee is held over (works beyond the end of his or her schedule) the employee is to notify the supervisor and at the election of the LDSS, the employee's schedule may be adjusted during that workweek in order to avoid overtime hours.

   b. Only on rare occasions may an employee work overtime without the approval of the supervisor.

   c. If an employee fails to promptly notify the supervisor or if there is a pattern of working overtime without approval, the employee may be disciplined.

   d. Whether approval was received and/or discipline given, the employee will receive compensatory leave or overtime pay for the overtime hours worked.

   Whether monetary~~cash~~ payments are made or compensatory leave given, the compensation shall be at 1.5 for each hour of overtime worked.

C. Accrual of Compensatory Leave

1. Rate of Compensatory Leave

   The rate of compensatory leave is one and one-half hours of leave for every hour actually worked over 40 hours in any workweek.

2. Maximum Amount of Accrued Compensatory Leave

   The maximum amount of compensatory leave that an employee may accrue is 240 hours; when that amount is reached, the employee must be paid cash for all overtime hours worked. An LDSS, however, may establish a lesser maximum amount of compensatory leave that an employee is allowed to accrue.

3. Duration of Compensatory Leave

   Compensatory leave does not expire~~lapse~~.

4. Cashing Out of Compensatory Leave

   The LDSS may cash out compensatory leave in whole or in part at any time at its sole discretion. Payment for compensatory leave must be at the employee's current regular rate of pay or at the average regular rate of pay for the past three years, whichever is greater.

5. Adjusting Scheduling

   To avoid overtime pay, the LDSS may adjust an employee's schedule during the workweek so that no overtime is worked.

D. Use of Compensatory Leave

1. Scheduling of Leave

   The LDSS should attempt to approve the use of compensatory leave at the time requested by the employee but has discretion to approve leave for a different time if granting the requested leave would be unduly disruptive.

2. Requiring Use of Compensatory Leave

   The LDSS may at any time require an employee to use compensatory leave in order to reduce the number of hours accrued.

E. Treatment of Leave upon Change of Status

1. Payment When Leaving the LDSS

   An employee shall be paid in a lump sum for unused accrued compensatory leave when employment is terminated.

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2. Payment upon Employee's Death

   Payment upon an employee's death shall be made to the Administrator or the Executor of the employee's estate. If there is no Administrator or Executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

3. Rate of Payment

   Compensatory leave balances must be paid at the employee's ending average hourly rate of pay or the employee's average hourly rate of pay over the last three continuous years of employment, whichever is greater.

4. Retention of Accrued Compensatory Leave

   When an employee is transferred, promoted, or demoted to another position within the same LDSS, the LDSS may cash out the accrued compensatory leave.

F. Violations

An employee who believes that the LDSS has taken an action or has a practice that violates the FLSA, he may bring a complaint to the Director. That complaint will be investigated and if it should be determined that an error or illegal practice has occurred, a correction will be made. Any compensation that may be due the employee will be promptly paid. Employees are protected against retaliatory actions when bringing such a complaint. A non-probationary employee may also initiate a grievance challenging a violation of the FLSA.

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Section V
Special Duty Leave

Purpose

The purpose of this policy is to provide procedures for providing employees with paid leave as compensation for additional hours worked during specific times such as holidays.

Scope

This policy applies to all employees.

A. Definitions

1. Special Duty Leave

   Paid time off when an employee is required to work on an official office closing day, a holiday, a scheduled day off, or when a holiday falls on an employee's scheduled day off. Special duty leave may in limited circumstances also be granted to an exempt employee when the employee works extra hours in a work week.

2. Exempt Employee

   An employee who is not subject to the overtime provisions of the Fair Labor Standards Act.

3. Non-Exempt Employee

   An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

B. When Special Duty Leave May be Given

1. Types Of Work Eligible For Special Duty Leave

   An employee may receive special duty leave when required to work hours that are not within the expected or assigned work hours. Examples are:

   a. Additional work in a workweek when such hours are not overtime hours;

   b. On a day when the office is closed, e.g., a weekend or in an emergency;

   c. On a holiday; or

   d. On a scheduled day off.

2. Special Duty Leave Not Required Compensation

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LDSS may, but are not required to, compensate employees for this extra work with special duty leave. Other forms of compensation may be given at the option of the LDSS.

C. Earning and Using Special Duty Leave

1. Earning Leave

   a. Non-Exempt Employees

   Special duty leave is to be given to non-exempt employees on an hour-for-hour basis for hours actually worked.

   b. Exempt Employees

   Exempt employees are paid a salary for as many hours of work as may be required to complete assigned responsibilities. Special duty leave is not to be given to exempt employees for hours worked to complete routine projects because special duty leave may be given only in circumstances when the employee is required by the Director to work outside of normal business hours (e.g. evenings, weekends, holidays or office closings).

2. Special Duty Leave Must be Used or It is Lost

   Accrued special duty leave expires~~lapses~~ within 12 months from the date it is earned. In extenuating circumstances arising from LDSS needs and as approved by the local board~~Local Board~~, an LDSS may allow an employee to carry over some or all of the special duty leave balances and may provide a time period during which it must be used.

3. Use

   Accrued special duty leave may be used for the same purposes as annual leave.

4. Cashing Out of Special Duty Leave

   At any time that the LDSS determines, it may cash out special duty leave. When it is cashed out, it shall be paid hour for hour at the employee's current average hourly rate of pay.

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D. Special Duty Leave Must be Authorized

1. In Writing

   Special duty leave cannot be earned unless it has been authorized in writing by the Director.

2. In Advance

   Special duty leave must be authorized before the employee works the extra hours. However, if emergency conditions exist which make it impossible to authorize special duty leave in advance, written authorization should be obtained as soon as possible thereafter.

E. Treatment of Special Duty Leave upon Change of Status

1. Payment When Leaving the LDSS

   An employee shall be paid in a lump sum for the unused special duty leave balances when employment terminates for any reason. This payment shall be allocated to an equivalent number of days for purposes of unemployment compensation benefits.

2. Payment upon Employee's Death

   Upon an employee's death, payment for the accrued special duty leave balances shall be made to the administrator or the executor of the estate. If there is no administrator or executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

3. Rate of Payment

   Each hour of special duty leave shall be paid at the employee's current average hourly rate of pay.

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Section VI
Holidays

Purpose

The purpose of this policy is to notify employees of which days have been designated as observed holidays and the LDSS is closed.

Scope

This policy applies to all employees.

A. Days Observed as Holidays

1. Holidays

   The following 12 paid holidays are observed by closing LDSS offices:

   - New Year's Day (January 1)
   - Lee Jackson Day (Friday preceding third Monday in January)
   - Martin Luther King Day (third Monday in January)
   - George Washington Day (Third Monday in February)
   - Memorial Day (Last Monday in May)
   - Independence Day (July 4)
   - Labor Day (First Monday in September)
   - Columbus Day (Second Monday in October)
   - Veteran's Day (November 11)
   - Thanksgiving Day (Fourth Thursday in November)
   - The Friday following Thanksgiving
   - Christmas Day (December 25)

2. Other Holidays

   a. Should the Governor declare an official holiday that is not among those listed above, the LDSS will be closed and such holiday shall be observed.

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b. If the local government has adopted alternative holiday observances, the LDSS may elect to follow the locally observed holidays. LDSS who have elected to deviate to their local jurisdiction's holiday policy must follow the local jurisdiction's Holiday schedule.

3. When Holidays Fall on a Weekend Day

An official holiday that falls on a Saturday will be observed on the preceding Friday. An official holiday that falls on a Sunday will be observed on the following Monday.

B. Compensation Issues

1. When Required to Work on a Holiday

Offices are closed on official holidays and generally work is not to be performed. However, there may be certain employees who because of the nature of their job are scheduled to work on a holiday. If an employee is scheduled to work on a holiday, the employee may receive in addition to salary or wages special duty leave or cash compensation on an hour for hour basis.

2. Effect of Leave without Pay Status

If an employee is not on paid status on the scheduled workday immediately before and immediately after the holiday, no salary will be received for the holiday.

C. Religious Observances

1. Reasonable Accommodation

The LDSS will make reasonable accommodation for the religious needs of employees unless the accommodation will result in undue hardship to the LDSS.

a. If an employee requests time off to participate in religious observances that fall during normal work hours, reasonable efforts will be made to accommodate for the religious observance.

b. Employees should request leave in advance of the religious holiday. The earlier the request is made, it will be easier for the LDSS to make an accommodation.

d. If a full day absence creates an undue hardship, the LDSS will work with the employee to assure that reasonable time off will be given.

d. If leave balances are insufficient to cover the absence, and the schedule for the work can be adjusted, the hours off are to be charged to leave without pay.

Chapter 2 – Classification & Compensation

Section VII
Chapter Appendix - Forms and Notices

The following forms may be helpful in executing the components for Chapter 2:

Classification and Compensation

1. Jurisdiction Wide Self-Analysis Form~~Self-Analysis Audit Questionnaire~~

~~Compensation~~

2. Certification of FLSA Exempt Status Form
3. Executive Employee Exemption
4. Administrative Employee Exemption
5. Professional Employee Exemption
6. Computer Employee Exemption

To locate the forms, refer to the HR~~LDSS~~ Support – Local sections of SPARK.