



# Montana Operations Manual

## *Policy*

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03-0210

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2011

**Issuing Authority**

Department of Administration, State Human Resources Division

## **Overtime and Nonexempt Compensatory Time Policy**

### **I. Purpose**

This policy establishes uniform procedures for administering overtime compensation and nonexempt compensatory time. This policy also directs agencies to comply with the Fair Labor Standards Act (FLSA) and Montana's Wage and Hour Laws when administering overtime compensation or nonexempt compensatory time.

### **II. Scope**

This policy covers positions identified as nonexempt from the FLSA in Montana's executive branch except those positions in the Montana university system, the Montana State Fund, elected officials, the personal staff of elected officials, and any other position specifically excluded under Section 2-18-103 and -104, MCA.

Some nonexempt positions, such as firefighting and law enforcement positions, may have partial exemptions from the overtime provisions of FLSA. Section 7 of the FLSA and Title 29, CFR, Chapter V, Part 553 of the FLSA regulations explain these partial exemptions. Employees in nonexempt positions qualifying for the partial exemption are covered by the requirements of this policy after the partial exemption has been met.

Any collective bargaining agreement providing greater overtime or nonexempt compensatory time benefits supersedes this policy.

### **III. Procedures**

Nothing in this policy guarantees an employee in a nonexempt position will be allowed to work time resulting in the payment of overtime or the accrual of nonexempt compensatory time.

## **A. Overtime Compensation**

As provided in Section 7 of the FLSA, employees in nonexempt positions will receive overtime compensation for all time in a pay status over 40 hours in a workweek. Employees will receive overtime compensation at a rate of one and one-half times the employee's regular hourly rate unless the agency and employee agree to the accrual and use of nonexempt compensatory time.

## **B. Nonexempt Compensatory Time**

1. Agency management must decide if employees will have an option to accrue and use nonexempt compensatory time. If agency management makes nonexempt compensatory time available, employees will voluntarily choose between accruing nonexempt compensatory time and receiving overtime compensation. All employees in an occupation must be given the opportunity to choose between accruing nonexempt compensatory time and receiving overtime compensation.
2. If agency management allows employees in nonexempt positions to accrue nonexempt compensatory time, the nonexempt compensatory time is accrued at the rate of one and one-half hours of nonexempt compensatory time for each hour in a pay status over 40 hours in a workweek.
3. The FLSA requires agency management to have an agreement in place before allowing employees to accrue and use nonexempt compensatory time. The agreement may be:
  - a. part of a collective bargaining agreement when the employees are in positions covered by the collective bargaining agreement; or
  - b. a memorandum of understanding with each individual employee when employees are in positions not covered by a collective bargaining agreement.

## **C. Administering Overtime and Nonexempt Compensatory Time**

1. When administering overtime and nonexempt compensatory time, agency management must:
  - a. require advance approval, whenever possible, for an employee in a nonexempt position to work hours resulting in the payment of overtime compensation or the accrual of nonexempt compensatory time;
  - b. require employees to take nonexempt compensatory time off in no less than one-half hour increments;

- c. pay out at the employee's regular rate unused nonexempt compensatory time when an employee transfers from one agency to another agency; and
  - d. follow the record keeping requirements in the Employee Records Management Policy (2.21.6606 through 2.21.6617 and 2.21.6622, ARM).
2. Employees are responsible for recording overtime and nonexempt compensatory time on a timesheet. Hours must be recorded in not less than one-tenth of an hour increments. (For example, 0.1 hour equals 6 minutes, 0.2 hour equals 12 minutes.) Agencies may round off the fractional increment provided the practice does not result in a failure to compensate an employee for the entire time worked.
3. Employees may not accrue more than 240 hours of nonexempt compensatory time. If an employee accrues 240 hours of nonexempt compensatory time, the employee will earn overtime compensation for additional time in a pay status in excess of 40 hours in a workweek.
4. When administering overtime or nonexempt compensatory time, agency management may:
  - a. establish a lower maximum accrual amount than 240 hours;
  - b. pay out, at any time, an employee's accrued nonexempt compensatory time balance at the employee's regular rate; and
  - c. adjust the work schedule of an employee in a nonexempt position for a workweek or require the employee to take time off without pay to prevent the employee from earning overtime compensation or accruing nonexempt compensatory time.
5. When an employee changes from a nonexempt position to an exempt position through a personnel action such as promotion or reassignment, agency management must either pay out the employee's unused nonexempt compensatory time at the employee's regular rate or allow the employee in the exempt position to maintain the nonexempt compensatory time balance. If management allows the employee to maintain the nonexempt compensatory time balance, management must allow the employee to use the nonexempt compensatory time as time off and pay out all remaining nonexempt compensatory time upon termination at the employee's regular hourly rate.

#### **IV. Resources**

- A. Link to the Fair Labor Standards Act of 1938, as amended – <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

- B. Link to Title 29, CFR, Chapter V –  
[http://www.dol.gov/dol/cfr/Title\\_29/Chapter\\_V.htm](http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm)
- C. Link to Title 29, CFR, Chapter V, Part 553, Application of the Fair Labor Standards Act to Employees of State and Local Governments –  
[http://www.dol.gov/dol/allcfr/Title\\_29/Part\\_553/toc.htm](http://www.dol.gov/dol/allcfr/Title_29/Part_553/toc.htm)

## V. Definitions

All definitions under 2-18-101, MCA apply to this policy. The following definitions also apply.

**In a Pay Status:** Time period in which an employee is being paid for hours worked or for annual leave, sick leave, sick leave fund grants, holidays, or compensatory time.

**Nonexempt Position:** A position subject to the overtime provisions of the Fair Labor Standards Act (FLSA), as amended, the regulations adopted by the U.S. Department of Labor's Wage and Hour Division (Title 29, CFR, Chapter V, as amended), and Montana's Wage and Hour Laws. It does not include positions exempt from the overtime pay provisions of the FLSA as defined in Title 29, CFR, Chapter V, Part 541.

**Nonexempt Compensatory Time:** Time accrued by an employee in a nonexempt position for all time in a pay status in excess of 40 hours in a workweek. The time accrued may be taken as approved time off at a later date or paid out in accordance with this policy and federal requirements.

**Overtime:** Time in a pay status by an employee in nonexempt position exceeding 40 hours in a workweek.

**Overtime Compensation:** Monetary compensation paid to an employee in a nonexempt position for all time in a pay status in excess of 40 hours in a workweek.

**Workweek:** A regular, recurring period of 168 hours that occurs over seven consecutive 24 hour periods. In Montana state government, the workweek begins at 12:00 am on Saturday and ends at 11:59 pm on Friday, unless defined otherwise by agency management or a collective bargaining agreement.