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PURPOSE

This directive establishes the Department of Disabilities and Special Needs (DDSN) policies relative to the Fair Labor Standards Act (FLSA) to ensure regulatory compliance. FLSA establishes standards for minimum wages, overtime payment and record keeping.

EXEMPTION STATUS UNDER THE FLSA

The Director of Human Resources (HR) is responsible for interpretation of the FLSA requirements and the determination of exemption status for all positions within DDSN.

DISTRICT I

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Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
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9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

Coastal Center - Phone: 843/873-5750
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Managers shall be advised of exemptions from FLSA minimum wage and/or overtime payment requirements for any bona fide Executive, Administrative, or Professional position. Such positions are categorized as FLSA "Exempt." All other positions shall be categorized as FLSA "Non-Exempt."

Employees working an FLSA **Exempt** position are **not eligible** for overtime payment. Employees working an FLSA **Non-Exempt** position **are eligible** to be paid overtime, if so scheduled and approved.

The exemption status of each position is recorded in the HR Offices, and shall be reflected in each Position Description (PD) and position data profile.

COMPENSATION

Compensation of South Carolina State employees is based on 40 hours per week or 2080 per year. DDSN employees, who are scheduled to work a standard 37.50 hour per workweek, are compensated based upon 1950 hours per year.

All DDSN Non-Exempt employees must be paid not less than the current minimum wage. Current minimum wage postings are kept in common areas and HR bulletin boards at each regional center and central office. DDSN employees are compensated in accordance with the South Carolina State Compensation Plan which complies with the minimum wage requirements.

GENERAL POLICY ON THE USE OF OVERTIME

In general, "**Overtime**" is the term used to describe all hours worked by an employee in excess of 40 hours in a seven (7) consecutive day work period. Many DDSN employees in direct care, shift positions work "8 and 80" schedules. In this case, overtime describes all hours worked in excess of 8 hours in a workday and 80 hours worked over a 14-day overtime period.

An employee should only be required to work overtime on an occasional basis to meet a sudden increase in workload; to overcome productive time lost due to some mechanical failure; or to meet the demands of a crisis situation. Overtime should not be relied upon as a means to cover the basic direct care schedule. It may; however, be used to provide minimum coverage as a result of unusual absenteeism or temporary one-to-one supervision when other solutions are not available.

When a service area and/or employee is found to be consistently generating overtime, the functions of that area or employee shall be reviewed by appropriate management. Every attempt should be made to prevent the repetitive and chronic use of overtime.

It is the responsibility of each supervisor to determine that the provisions of this policy are administered in the best interest of DDSN. Although managers are responsible for requesting approval of staff overtime, it is equally important to control unauthorized overtime. Unauthorized work shall be counted as hours worked if the responsible manager could have

stopped it but did not, or if he/she knows or has a reason to know of the practice of working unauthorized overtime.

Overtime must be approved in advance by an associate state director, district director, facility administrator, program administrator, nursing administrator or appropriate officer of the day (AOD), unless an emergency is of such immediate nature that a resident consumer's safety or well-being is involved.

Overtime should not be relied upon as a means to cover the basic direct-care schedule; however, it may be used to provide minimum coverage as a result of unusual absenteeism or temporary one-to-one supervision when other solutions are not available. Immediate emergency requests for overtime should be submitted for approval to the facility administrator, program administrator, nursing director or AOD within 72 hours of the occurrence. This authority shall not be further delegated.

Overtime should not be approved:

- For an amount of time that will cause an employee to work more than 16 hours in a day; or
- For an amount of time that exceeds 40 hours in a 14-day overtime period.

THE STANDARD WORKWEEK

DDSN management shall determine the appropriate work schedule for each service based on the requirements of the workplace as well as workforce considerations. The standard workweek for employees is seven (7) days over which an employee works 37.5 hours. For scheduling and record-keeping purposes, the workweek begins at 12:01A.M. Friday and ends at 12:00 A.M. Thursday. Any employee may be required to work up to 40 hours per workweek without additional compensation.

All Non-Exempt employees are required to record their FLSA compensable hours worked (Attendance), as well as their time off (Absences) using the SC Enterprise Information System (SCEIS). FLSA compensable hours worked are those hours wherein an employee actively performs job duties. Time-off, including holidays, authorized paid leave (annual or sick leave) and/or unpaid leave (leave without pay) **are not considered "hours worked,"** and are not considered in the calculation of overtime or shift-differential payment.

Non-Shift Employees

Non-shift employees have a standard workweek of 37.5 hours; however, these employees shall not receive additional compensation for hours they are required to work that total more than 37.5 but not more than 40.0 hours per workweek. Non-shift Exempt employees shall not receive compensatory time for hours worked between 37.5 and 40.0 hours per workweek.

Employees Who Work Shift Positions

The standard workweek for employees assigned to “shift” positions in areas requiring on-duty staff 24 hours per day (e.g. Residential) is seven (7) days over which the employee works 40.0 hours.

Non-Exempt, shift employees may work on an “8 and 80” schedule over a 14-day overtime period consistent with FLSA approved schedules for nursing care facilities, intermediate care facilities, and residential care establishments.¹ Under this “8 and 80” schedule rule, DDSN will pay Non-Exempt, shift employees overtime for **any hours worked** over 8 hours in a day, and for **hours worked** in excess of 80 hours in the 14-day overtime work period.

Nursing personnel may be scheduled to work 12 hours/day (maximum allowable), and will be paid overtime **based upon hours worked** in excess of 40.0 hours over the 7-day workweek.

REGULAR RATE OF PAY

The regular rate of pay includes all remuneration for employment paid to an employee, to include his/her base pay, longevities and shift differentials.

HOURLY RATE EMPLOYEES

The hourly rate is the “regular rate of pay” for hourly employees, i.e. Temporary staff. Hourly employees shall be compensated for all hours worked. Because only salaried employees can be categorized as “Exempt,” all employees compensated on an hourly rate basis must be categorized as FLSA Non-Exempt.

OVERTIME COMPENSATION

Non-Exempt employees will be paid no less than one and one-half (1½) their regular rate of pay for all overtime hours worked.

Exempt employees are not eligible for overtime compensation.

OVERTIME OR COMPENSATORY TIME

May Not be Waived (“Off the Record” Adjustments)

An agreement between supervisor and employee cannot waive the agency requirement to pay overtime or grant compensatory time to Non-Exempt employees, for eligible overtime hours worked.

¹ U.S. Department of Labor, Code of Federal Regulations: 29 CFR 778.601 – Special overtime provisions available for hospital and residential care establishments under Section 7 (j)

Adjusted Workweek

Under warranted circumstances and if pre-approved by appropriate management staff, a Non-Exempt, non-shift employee may be allowed to work in excess of the normal workday and may be given time off during the same workweek at the rate of an hour for an hour to avoid working over 40 hours in the workweek. This type of work rescheduling prevents the employee from working over 40 hours in an overtime workweek; and therefore eliminates the need for overtime payment.

Exempt Employees

Exempt employees are not eligible for overtime pay; however, they may request and (if approved) receive compensatory time off for hours worked in excess of 40 hours in the normal workweek (including time spent traveling, attending meetings and trainings, etc.) There is no requirement to grant compensatory time to employees in Exempt positions.

Note: If approved, the compensatory time for Exempt employees shall be provided at a rate of one (1) hour of compensatory time(or less) for each one (1) hour worked in excess of 40 in the official workweek.

HOLIDAYS

Holidays Worked (Non-Exempt Employees)

A Non-Exempt employee who is required to work on a State holiday shall be given compensatory holiday leave credits in accordance with Section 19-708.03 of the State Human Resources Regulations, and hours worked on a State holiday shall be used in calculating total hours worked for the purposes of overtime pay.

Holidays Worked (Exempt Employees)

An Exempt employee who is required to work on a State holiday shall be given holiday compensatory leave credits in accordance with Section 19-708.03 of the State Human Resources Regulations.

HOURS WORKED

“Hours worked” as defined by FLSA includes all the time an employee is required to be on duty or on the employer’s premises or at a prescribed workplace for the employer, and all the time during which the employee is permitted to work for the employer. This definition has special significance for Non-Exempt employees, and managers should be aware of the following to properly manage overtime expense for their staffs.

A. Beginning and Ending Work

Employees who are eligible for overtime compensation ***are not to begin work before the agreed upon start of shift and will not be permitted to work beyond the agreed upon end of shift.*** The only exemption to this policy would be where prior approval of departmental sanctioned overtime is available.

In direct care areas where employees work shifts and must report to work prior to the beginning of their scheduled shift and/or remain for a short time after the shift ends to affect a smooth transfer of duties to their replacements, a change-over period may be required. Individuals who are required to be present for a change-over period should be allowed free time during the shift so that their work hours do not exceed 8.00 hours per day; however, free time or break time must be carefully scheduled to ensure a living unit is not left understaffed.

B. Leave Status (Absences)

An employee work absence (time spent in leave status), whether approved, unapproved, compensated or uncompensated **is not** considered hours worked.

C. Meal Period

A bona fide meal period of 30 minutes or more which occurs during the scheduled workday is not considered hours worked if the employee is completely relieved from duty for the purpose of eating a meal.

- Employees in administrative positions are allowed one (1) hour for lunch during the period between 11:30 A.M. and 2:00 P.M.
- Direct care employees should be allowed to take an appropriate meal break during their shift provided another employee is covering their duties during this period.
- A bona fide meal period is not hours worked if the employee is completely relieved from duty for the purpose of eating a regular meal. The employee must be free to leave his or her duty post; however, there is no requirement that the employee be allowed to leave the premises or work site. When the meal period is uninterrupted, except for rare and infrequent emergency calls, the meal period shall be excluded from time that is considered hours worked.

D. Rest Periods

Rest periods or “breaks” of short duration must be counted as hours worked. One morning and one afternoon “break” of no more than 15 minutes each may be permitted if the employee’s workload allows. ***Breaks shall not be used to allow an employee to arrive to work late, to leave early or to extend the lunch period.***

E. On Call/Call Back

An employee who is not required to remain on the employer's premises, but is merely required to leave word at home or with DDSN where he/she might be reached, is not working while "on call." The amount of time that an employee is home or away from the worksite, but must remain available to DDSN contact in case he/she needs to be called back to the work site is not regarded as hours worked. Rather, in all cases where the employee is called back to the work site, she/he shall be credited with a minimum of two (2) hours of "call back" work time, excluding authorized travel time, even if services rendered require less than two (2) hours.

An employee shall not be credited, nor paid for call back time, if:

- The recall to work (call back) has been canceled; or
- The employee refuses to accept work that is offered upon reporting to work.

F. Travel Time

The regular commute to work (home to work and back travel) is not considered hours worked. Time spent travelling for one-day work assignments is considered hours worked regardless of the time of day or day of the week it occurs.

In an emergency situation, "travel time" may be considered hours worked. If an employee who has gone home after completing assigned work hours is subsequently called back to travel a substantial distance (15 miles or more one way) to perform an emergency job required by the employer, then all time spent in such travel is to be considered hours worked.

G. Overnight Travel

Work-related travel away from home involving an overnight stay for Non-Exempt employees is considered hours worked when it occurs during the employee's normal working hours. This provision is applicable not only on regular working days, but also during the corresponding hours on days the employee is not regularly scheduled to work.

Overnight travel in the company of a DDSN consumer/resident is considered working time hours worked and must be compensated. Time spent on overnight trips that involve sleeping, eating or traveling as a passenger on an airplane, train, boat or automobile is not considered hours worked and does not have to be compensated, provided the employee is not in the company of a DDSN consumer/resident, unless the travel cuts across the employee's regularly scheduled workday. Employees who make overnight trips of 24 hours or longer for the purpose of accompanying DDSN consumers/residents who are traveling will be paid for all actual time spent on the trip except eight (8) hours per day, which will be deducted for sleeping time provided that:

- (1) The employer and employee agree to the exclusion for sleep time;
- (2) Adequate sleeping facilities are furnished;
- (3) The employee can usually enjoy an uninterrupted night's sleep;
- (4) Not more than eight (8) hours may be excluded for sleep; and
- (5) Unless an employee gets a minimum of five (5) hours sleep, all hours during sleep shall be credited as hours worked.

Additional time spent on trips that is utilized for personal reasons will not be compensated and must be approved in advance (e.g., lunch break when relieved of responsibility of a DDSN consumer/resident).

H. Lectures, Meetings and Training

For reasons of agency-assigned responsibility, lectures, meetings and training programs, etc., are considered hours worked and must be compensated appropriately.

I. Volunteer Service

Employees may volunteer to provide services to consumers, residents and the Department provided that the services are different than those normally found in the description of their job duties, and occurs at times other than the regularly scheduled work hours. If such volunteer service is part of their normal duties, the volunteer service shall not be permitted unless previously approved by management as additional hours worked.

J. Employment in Other State Agencies

The agencies of the State Government of South Carolina are considered as one employer. The accumulation of work performed by an employee at one or more SC State government agencies must be considered in overtime payment for Non-Exempt employees. Such "dual employment" must be approved by the Director of HR in advance.

RECORDS

Certain records must be retained under FLSA. These records shall be preserved for a period of no less than three (3) years.

1. Identification

- Employee's full name and Personnel Number
- Home address, including zip code
- Date of birth, if 18 years of age or younger
- Employee occupation and gender

2. Hours

- Time of day and day of week when employee's work week begins
- Hours worked each day
- Total hours worked each week

3. Wages

- Basis on which wages are paid (hourly rate, weekly rate, etc.)
- Regular hourly pay rate for any week when overtime is worked
- Nature and amount of each payment excluded from regular rate
- Total daily or weekly straight time pay
- Total overtime pay for work period
- All additions or deletions affecting wage for each pay period
- Total pay each pay period
- Date of payment and the pay period covered by the payment

4. Compensatory Time

- Number of hours of compensatory time earned each pay period for each employee.
- Number of hours of compensatory time actually used by each employee.
- Number of hours of compensatory time compensated in cash, the total amount paid and the date of each payment.

5. Sign-In/Out Documents

All Non-Exempt employees are required to record attendance hours (hours worked) in SCEIS (either through MySCEmployee ESS or through an assigned Time Administrator) to maintain appropriate sign-in/out documents that reflect hours worked and overtime hours including daily work start time, lunch/dinner break, and ending time of work. Attendance/Absence timesheets used by Time Administrators shall be retained in the HR office for three (3) years after payment for the work period and then destroyed in accordance with State Records Retention Schedules.

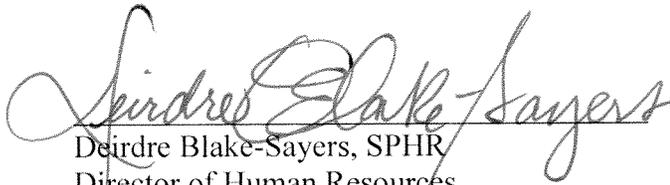
6. Responsibility

The Director of Human Resources, District Directors and Facility Administrators shall ensure that records are retained as required by FLSA.

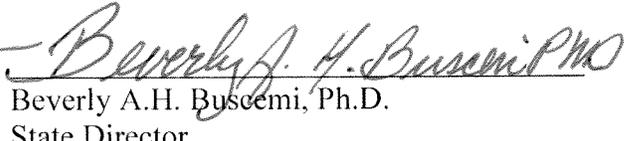
FAIR LABOR STANDARDS ACT POSTER

The FLSA requires that the poster "Notice to Employees" be posted on bulletin boards where notices of general interest to employees are posted. HR and service area supervisors of the

various organizational components are responsible for ensuring that these posters remain posted and visible.



Deirdre Blake-Sayers, SPHR
Director of Human Resources
(Originator)



Beverly A.H. Buscemi, Ph.D.
State Director
(Approved)

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