



POLICY 3.20, OVERTIME

APPLICATION

All Executive Branch employees, including full-time and part-time classified and wage, employees of the Governor's Office, and the Office of the Lieutenant Governor. As directed by the Appointing Authority, agencies may use this policy as a guide for employees who are not covered by the Virginia Personnel Act.

PURPOSE

It is the policy of the Commonwealth of Virginia to ensure employees are classified and paid appropriately. This policy provides guidance and clarity on overtime pay requirements and practices, and management's responsibility for cost-effective overtime management in accordance with the Fair Labor Standards Act (FLSA or the Act), Code of Virginia, and Virginia Minimum Wage Act. In addition, this policy provides uniform guidelines for the accrual, use, and payment of overtime leave and compensatory leave.

AUTHORITY & INTERPRETATION

Title 2.2 of the *Code of Virginia*

The Director of the Department of Human Resource Management (DHRM) is responsible for official interpretation of this policy, in accordance with §2.2-1201 of the *Code of Virginia*. DHRM reserves the right to revise or eliminate this policy.

CODE OF VIRGINIA

[§ 40.1-28.10](#)

POLICY HISTORY

EFFECTIVE DATE	DESCRIPTION
11/01/2025	Original publication of policy.



RESPONSIBILITIES

Agency Responsibilities	• Determine an employee's FLSA status and record it in the HR system of record. Employees and supervisors must be informed of this status and related timekeeping requirements. See: Department of Labor fact sheet • Develop and communicate the agency policy for overtime pay or leave. • Provide supervisors with appropriate training necessary to manage employees, including training on the impact of the FLSA. • Maintain adequate internal controls to ensure employee overtime is authorized only if cost effective and necessary. • Conspicuously post FLSA requirements.
Employee Responsibilities	• Work overtime hours as required by management. • Non-exempt employees must not work additional hours that have not been authorized by management.
Managers/Supervisor Responsibilities	• Ensure employees' work hours are accurately recorded. Verify that time records are complete, accurate, and submitted in accordance with agency policy and procedures. See: Department of Labor fact sheet • Provide written or documented approval or authorization before overtime work is performed, except in emergencies or unavoidable circumstances. • Ensure that employees understand whether they are Non-Exempt (covered by the FLSA) or Exempt. Non-Exempt employees are eligible for overtime hours and pay, while Exempt employees are not. • Proactively manage workloads to prevent the need for unauthorized or excessive overtime. • Inform employees of the agency's overtime procedures and approval requirements. • Collaborate with Human Resources and Payroll staff to ensure proper FLSA classification and compensation. • Maintain records of overtime decisions, approvals, and any justifications for audit and compliance purposes.



FLSA EMPLOYMENT CLASSIFICATION (EXEMPT/NON-EXEMPT)

Non-Exempt Position	• Positions designated as non-exempt under the FLSA are subject to the regulations and provisions of the Act. • Employees in non-exempt positions are required to be paid for all hours worked, regardless of approval, within an established 7-day work week. • Non-Exempt employees are paid overtime at 1.5 times the employee's regular FLSA rate for any hours physically worked by an employee in excess of 40 hours in any established 7-day work period. Exceptions for non-exempt positions in law enforcement and fire protection are noted below.
Exempt Position	• A position that is exempt from overtime requirements as established by the FLSA. These positions must have met at least one of the exemption tests in addition to the salary threshold. • Employees in exempt positions receive a salary based on a set weekly wage and are not subject to the overtime provisions of the FLSA, nor do they receive pay for working additional hours in a work week.
Fire Protection, Law Enforcement, or Hospitals	• Agencies are to pay non-exempt fire protection and law-enforcement employees overtime compensation or leave at a rate of not less than 1.5 times the employee's regular rate of pay for all hours worked in excess of the required hours in the established FLSA work period (7 days up to 28 days). See: eCFR :: 29 CFR Part 553 Subpart C -- Fire Protection and Law Enforcement Employees of Public Agencies. • Pursuant to a prior agreement or understanding with an employee or employees, agencies designated as hospitals may adopt a fixed work period of 14 consecutive days for the purpose of computing overtime pay in lieu of the regular 7-day workweek. Non-exempt employees must receive not less than 1.5 times their regular rate of pay for all hours worked over 8 in any workday, and over 80 in the 14-day work period. See: eCFR :: 29 CFR Part 553 -- Application of Fair Labor Standards Act to Employees of State and Local Governments.
Hourly Rate	• The hourly rate for classified non-exempt employees is the employee's salary divided by the number of hours worked in a workweek. • The hourly rate for wage non-exempt employees is their present regular hourly pay, which is defined as the total remuneration divided by the total hours worked. • Payments which are not part of the hourly rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness. See: eCFR Title 29 Subtitle B Chapter V Subchapter B Part 778



Wage Staff	• Wage employees are not eligible to accrue overtime leave. They shall be compensated with pay, at a time-and-a-half rate, for work in excess of 40 regular hours in an FLSA week.
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OVERTIME PAY

Hours of Work & Overtime	• Full-time employees of the Commonwealth are paid a salary based on 40 hours of work in a standard work week. • Full-time and hourly employees who are not exempt from the provisions of the FLSA are eligible to be compensated for time worked in excess of 40 hours in a standard work week. • Paid time off, such as vacation, sick, personal, holiday and other forms of paid time off, does not count as part of the hours worked in a standard work week to determine if overtime pay is applicable and the amount of overtime pay that is due.
Exempt Employees	• Exempt employees are excluded from the overtime provisions of the FLSA. • Full-time employees who are exempt from the provisions of FLSA are not eligible to be compensated for time worked in excess of 40 hours in a standard work week. ○ In accordance with the Compensatory Leave Policy 3.10, an agency head may provide eligible employees with paid leave as compensation for additional hours worked during specific times. Compensatory leave for exempt employees is awarded at a straight-time or less rate.
Standard Work Week	• Agency management has the discretion to establish a standard work week. • Where no other work week has been established, the standard work week will begin at 12:01 a.m. Sunday, and end at midnight Saturday on a 7-day period. • Before establishing or changing the standard work week, an agency should consult with DHRM.
Work period for law enforcement and fire protection	• Agencies with positions in law enforcement or fire protection may establish a separate work period for those positions, which shall be at least 7 days but not exceed 28 days. • Before establishing or changing the work period, the agency should consult with DHRM.
Authorization to Work Overtime	• Approval to work overtime hours must be obtained by the employee's supervisor or manager prior to any overtime being worked.



	Unauthorized overtime work is to be paid in accordance with the FLSA, but may result in disciplinary action. (Refer to Policy 1.60 Standards of Conduct)
Payment of Overtime	In accordance with state payroll regulations, overtime is paid in arrears.

OVERTIME LEAVE

Purpose	This section provides guidelines to agencies for awarding overtime leave in lieu of overtime compensation when appropriate.
Earning Overtime Leave	- Agencies may elect to grant overtime leave instead of overtime pay when an employee covered by the FLSA (Non-Exempt) works more than 40 hours in any standard work week. Only hours physically worked are used to determine if compensation for overtime is required. - NOTE: Overtime for employees in hospitals, law enforcement (including corrections officers and game wardens), and fire protection who work an alternate workweek or work period will be compensated after the required work period has been physically worked.
Notification	- Agencies must provide written notification to affected employees of the decision to grant overtime leave prior to the performance of the overtime work. Agencies are not required to inform employees each time they work overtime, if there is an agency policy that states when overtime leave will be granted in lieu of overtime pay and if that policy is clearly communicated to all affected employees. - Agencies do not need to adopt the same agreement or understanding with all employees and may choose, based on business needs, to provide overtime leave to some employees and overtime pay to others. However, agencies must compensate similarly situated employees in a role or group consistently for overtime hours worked.
Conditions of Employment	- Agencies may require acceptance of overtime leave as a condition of employment. Agencies may do this by including language to this effect in their overtime leave policy and communicating it to applicants when they are offered employment. The person must knowingly and voluntarily agree to acceptance of overtime leave as a condition of employment and the agency must inform the employee that overtime leave may be preserved, used, or cashed in a manner consistent with the FLSA and policy. By accepting or continuing employment with the agency, Non-Exempt employees understand and agree that they will be compensated with overtime leave and acknowledge the agency's policy in that regard. - NOTE: Agencies may discontinue a policy of compensating non-exempt employees with overtime leave for overtime hours worked. However, if



	an agency has adopted a policy of granting overtime leave, even in specific situations, the agency must follow its policy consistently until a revised policy is issued and communicated to all Non-Exempt employees of the agency.
Documentation	• Communication of the agency policy or conditions of employment must be documented. For example, employees shall be asked to sign a statement indicating their understanding of the policy. Alternatively, the agency may retain a copy of a written transmittal of the policy to the employee or a signed acceptance of the letter offering them employment. Documentation should be maintained as part of the employee's official personnel file.

ACCRUAL OF OVERTIME LEAVE

Rate of Overtime Leave	• The rate of overtime leave is 1.5 hours of leave for every hour worked in excess of the required hours in any work period. • As noted, agencies may adopt an alternate workweek or standard work period for employees in hospital, law enforcement (including corrections officers and game wardens), and fire protection positions, pursuant to the FLSA and policy.
Limitation	• Employees may not have an overtime leave balance in excess of 240 hours, unless the employee holds a non-exempt law enforcement , or fire protection position - in which case his or her overtime leave balance shall not exceed 480 hours. Overtime leave balances increase agencies' fiscal liability as payouts of such non-expiring leave increase whenever salaries are increased. • Employees whose overtime leave hours have reached the 240- or 480-hour limit must be compensated with time and one-half times (1.5) overtime pay for any additional overtime hours worked until the overtime leave balance has been reduced through the use of leave or the payment of leave hours.
Establishment of Agency Accrual Limit	• Agencies may establish a lower limit of overtime leave that employees are allowed to accrue. As with the statutory limit, when the employee accrues the agency limit of overtime leave, the employee will not be allowed to accrue additional overtime leave until the balance is reduced to below the established limit but will be compensated with overtime pay for overtime hours worked past the established limit.
Duration of Leave	• Up to 80 hours of overtime leave may be carried over from one fiscal year to the next. • Overtime leave in excess of 80 hours must be paid out at the end of the fiscal year to limit agency liability.



APPROVAL FOR OVERTIME LEAVE

Supervisor Approval	• Employees must request and receive approval from their supervisors to use or accrue overtime leave. • Failure to obtain approval, however, will not remove the agency's obligation to compensate an eligible employee for overtime worked (but may result in disciplinary action). Refer to Policy 1.60 Standards of Conduct.
Leave Approval	• Agencies must approve the use of overtime leave as requested by the employee or approve an alternate date within a reasonable time after the request, unless the absence would unduly disrupt the operations of the agency. • Mere inconvenience to the agency, such as the need to schedule other employees to work overtime hours to provide coverage, is an insufficient basis for denying a request to use overtime leave.
Scheduling Leave Usage	• Agencies may choose to schedule an employee's use of overtime leave in order to manage overtime leave liability. • Agencies may adjust an employee's work schedule temporarily within a standard work week or work period to avoid overtime liability or to meet operational needs.
Paying Down Overtime Leave Balances	• In order to manage its overtime leave liability, an agency may pay a part or all of an employee's overtime leave balance at any time during the fiscal year per available funding, based on the employee's regular hourly rate at the time of the payment. • Agency decisions to pay the overtime leave balance shall be applied consistently to employees in similar occupational groups, units, and/or otherwise similarly situated employees.

IMPACT OF STATUS CHANGE

Movement within an agency	• Employees will retain their accrued overtime leave if they move to a lateral position within their agencies. • Employees are paid a lump sum for the full amount of their overtime leave when promoted or demoted within the agency.
Leaving State Service or Transferring to a Different Agency	• Employees are paid a lump sum for the full amount of their accrued overtime leave balance when they transfer to another agency or separate from state service. This includes separations by resignation (including resignation from layoff status), retirement, layoff, discharge, death, or transition into Long Term Disability (LTD).
Payment Upon Death	• Payment of an accrued overtime leave balance shall be made to the Administrator or Executor/Executrix of the employee's estate. If there is



	no Administrator or Executor, payment shall be made to the surviving spouse, or if none, to the next of kin in accordance with Section 64.1-123 of the Code of Virginia.
Military Leave	• Employees on active military duty have options available to them for use of their overtime leave balances. Leave balances may be: ○ Applied to the period of absence due to military service. ○ Paid up to the allowable accrual limit at the time of placement on leave without pay; and/or ○ Retained until reinstatement from military leave without pay. • NOTE: At the employee's option, payment may be made in either: ○ Lump sum, or ○ Through the regular payroll schedule.
Rate of Payment	• When employees are transferred with a promotion or demotion within the agency, payment will be calculated based on the rate prior to transfer. • Employees on active military duty who elect to receive payment for overtime leave will be paid at their current rate of pay at the start of their military leave. • When employees separate from state service or transfer to a different agency, overtime leave balances must be paid at the employee's last hourly pay rate (regular rate) or the employee's average hourly pay rate over the last three continuous years of employment, whichever is higher.

DEFINITIONS

Alternate Workweek	Schedules that differ from the standard 8-hours 5 days per week/40-hour workweek schedule. Alternative work schedules may include, but are not limited to, four 10-hour days, rotating shifts, flexible hours, and job sharing.
Compensatory Leave	Approved paid time off for an eligible employee having worked additional hours in a workweek, earned on an hour-for-hour basis. Refer to the policy for criteria specific to exempt versus non-exempt employees.
Exempt Employee	An employee whose position meets the exemption requirements of the FLSA, and, therefore, is not subject to the minimum wage and overtime provisions of the Act. Exempt employees receive an annual salary for work performed until the duties of their job are complete, without expectation of additional pay for extended hours.
Fair Labor Standards Act (FLSA)	Federal law that establishes minimum wage, overtime pay requirements, recordkeeping requirements, and child labor standards affecting full-time and part-time employees, including employees of federal, state, and local governments.



Hours Worked	All time an employee is necessarily required to be on the employer's premises, on duty, or at any other prescribed place of work, including any additional time the employee is allowed (i.e., suffered or permitted) to work.
Non-Exempt Employee	An employee whose position is covered by the minimum wage and overtime requirements of the FLSA.
Overtime	Time actually worked in excess of 40 hours in a workweek by a Non-Exempt employee, paid at time-and-one-half (1.5) times the employee's hourly rate.
Overtime Leave	Paid leave earned by a Non-Exempt employee instead of overtime pay, when appropriate. Non-Exempt employees earn 1.5 hours of leave for every hour worked over 40 hours in a work week.
Recordkeeping Requirements	Agencies must keep records for Non-Exempt employees that state the hours worked each day and the total hours worked each work week, in addition to other recordkeeping requirements. (DOL Fact Sheet).
Regular Rate of Pay	The regular rate is an hourly rate used to determine overtime pay. The regular rate of pay may not be less than the minimum wage established in the Code of Virginia or the FLSA. The formula for computing the regular rate is: $\frac{\text{Total compensation in the workweek (except for statutory exclusions)}}{\text{Total hours worked in the workweek}} = \text{Regular Rate for the workweek}$
Standard Workweek	An established and recurring period of time for which employees receive compensation. In most agencies, the workweek is a seven-day period beginning at 12:01 a.m. Sunday and ending at midnight on Saturday. The regular workweek for full-time positions, which consists of a 5-day, 40-hour per week schedule for every seven calendar-day period.
Work period	An established period of time of work for calculating overtime compensation, usually reserved for employees in Fire Protection and Law Enforcement positions. Work periods can be for any period of time between 7 and 28 days and include different thresholds for overtime based on the length of the work period and the type of employee.



RELATED POLICIES:

[Policy 1.25](#) [Hours of Work](#)

[Policy 3.10](#) [Compensatory Leave](#)