



# *employee relations* **BULLETIN**

March 29, 2001

(Replacing Bulletin dated March 28, 2000)

**To:** Heads of All Departments  
Departmental Personnel Officers

**Subject:** FAIR LABOR STANDARDS ACT UPDATE (NON-SWORN EMPLOYEES)

This Bulletin will serve as a reminder of certain aspects of the Fair Labor Standards Act (FLSA or Act) with respect to the workweek and record keeping. It includes a few points of clarification on the Bulletin issued on March 28, 2000, particularly pertaining to 9/80 work schedules and compliance requirements.

The FLSA establishes requirements regarding employee workweeks, hours of work, regular rate of pay, and related record keeping for non-exempt employees. *Non-exempt* (hourly) employees are covered by the overtime provisions of the Act. *Exempt* (salaried) employees are not covered by its overtime requirements.

## **OVERTIME LIMITS**

The Act requires all time worked over 40 hours in a workweek by non-exempt (other than safety employees) employees to be either compensated in cash at one and one-half times regular rate of pay, or booked at time and one-half for employees who are allowed to bank time in accordance with either a Memorandum of Understanding (MOU) or the Los Angeles Administrative Code. However, City MOUs and ordinances provide a more generous standard than FLSA by counting all compensated time, including vacation, holidays, sick leave etc., for purposes of determining overtime. FLSA limits the number of hours that can be accumulated on the books to 240 (i.e., 160 hours of overtime at time and one-half).

## **WORKWEEK**

FLSA defines a workweek as a regular recurring period of 168 consecutive hours. A workweek need not be the same as the calendar week, nor need it correspond to a payroll period. It may begin and end on any day of the week and at any hour of the day.

*It is the responsibility of each department to establish workweeks for all employees including exempt employees, in writing. A single workweek may be established for all non-exempt employees of the department, or different workweeks may be established for*

different employees or groups of employees. Once the beginning of an employee's workweek is established, it remains fixed. The designated workweek for an employee may be changed only if the change is intended to be permanent and not designed to evade overtime requirements of the FLSA. (The Department must maintain a written record of the FLSA workweek for each employee.) Changes should not occur more frequently than every six months unless there is an unanticipated operational need.

### 5/40, 4/10 and Reduced Work Schedules

Employees should be placed on the standard calendar workweek schedule (i.e., 12:01 a.m. Sunday through 12 midnight Saturday) whenever possible. This schedule should be used for non-exempt employees working a 40 hour schedule (5/40 or 4/10) workweek and all exempt (salaried) employees. Employees on reduced work schedules (e.g., 72, 3/12, half-time or part-time) also should be put on a standard work schedule unless operational needs necessitate another schedule.

**9/80 Modified Work Schedule** – Keeping in mind that every workweek stands alone and can begin at any time and on any day of the week, the 9/80 schedule (working nine days and 80 hours in a two week period) can be maintained without incurring any overtime liability by adopting the following type of work schedule.

	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Hours
Week One		9	9	9	9	4		40
Week Two		9	9	9	9	/4 (week two) OFF (RDO)		40

-- OR --

	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Hours
Week One		9	9	9	9	4		40
Week Two		9	9	9	8	/5 (week two) OFF (RDO)		40

Separate workweeks must be established for each 9/80 configuration that a department uses. (Note: Departments may limit the number of choices available to an employee.) Remember, once a workweek is established for an employee it becomes fixed. Use the following guidelines in establishing workweeks:

- *Workweek Characteristics and 9/80 Day Off.* The workweek always will begin and end on the same day of the week as the 9/80 day off and will be known as the split day. Specifically, the workweek will begin four hours after the standard start time on the split day that is worked. For example, the first workweek begins at 12:00 noon on Friday for an employee who starts work at 8:00 a.m.; week two begins at 12:01 p.m.; the workweek starts at 11:00 a.m. for the employee who starts work

at 7:00 a.m. The employee may not take lunch during the first four hours of the split day.

- *Short Day:* Although the short day could be any day of the week under FLSA, the City is limiting its placement to promote consistency Citywide. For ease of record keeping, the preferred choice for the 8-hour day (i.e., short day) is the same day of the week as the employee's day off. This allows the short day to be split evenly between week one and week two. However, departments may allow employees to take their short day the day before their 9/80 day off. No other options are permissible under City policy.

For the most part, an employee's time may be adjusted within the workweek to accommodate either employee or employer needs. For example, an employee who needs to drop off a car at the mechanic can be allowed to come in late and work late on most days of the workweek except on their 9/80 or split day (see explanation below). Similarly, an employee who works Monday through Friday can be asked to work on a Saturday and take the commensurate number of hours off in the same workweek. Such changes can be allowed as long as they are consistent with the operational needs of the department and the department can properly account for the time.

Notwithstanding the above, changes are not permitted under the following circumstances because they can easily result in unintended overtime:

- *Switching the 9/80 day:* Supervisors may not allow non-exempt employee's to switch their 9/80 day off to accommodate either management or the employee. Changing the 9/80 day almost always results in unintended overtime liability. Using the work schedule shown above as an example, changing the 9/80 day from Friday to any other day in Week Two would result in additional overtime for the employee under FLSA in Week Three (not shown). Similarly, changing the day off between weeks in the pay period would incur overtime liability in Week One or Three.
- *Adjusting the split day schedule:* Schedule changes on the split day, such as coming in early to leave early or staying late to make up for coming in late, are not permitted. Such changes usually result in an overtime liability. Management should permit changes on an employee's split day only if they want the employee to work additional hours (i.e., overtime).

**28 Day Deployment Period** – Certain civilian employees in the Police Department are scheduled to work a 28-day deployment period and have a unique work period pursuant to FLSA Section 7 (b)(2) [29 USC Section 207 (b)(2)].

**Changing the Workweek** – Either a department or an employee may request a change in workweek. Such a change is allowable if it is intended to be permanent. Departments should determine if any overtime is incurred when the change is made. To the extent possible, the change should be timed to reduce any overtime liability.

- *Transfers:* When an employee transfers to a new department, the employee's work schedule must be reestablished by the new department. The departments must determine if any overtime is incurred when the transfer is made (see Attachment A).

Special rules for calculating overtime apply when work schedules are changed. These rules are outlined in Attachment A.

**Jury Duty:** The practice of moving an employee on jury duty to a 5/40 work schedule will continue. This change is considered an operational need. This may result in overtime liability. However, jury duty is not considered hours worked in determining FLSA overtime.

**Holidays:** When a holiday falls on the employee's 9/80 day, the 9/80 day can be moved to another day within the same calendar week without incurring overtime liability. (See the Employee Relations Bulletin which is included as Attachment B.)

When a holiday falls on a regular nine hour workday, employees may make up the 9th hour on their short day as long as the short day is not on the split day and it is within the same workweek as the holiday. Otherwise, employees may make up the hour on another day during the same workweek as the holiday; use accumulated time or vacation; or take one hour of leave without pay.

## **EXCEPTIONS**

Departments may request exceptions to the policies above for defined work groups. The exception must be for operational reasons and must be consistent with the provisions of FLSA. Exceptions for individuals will be considered only in the case of severe hardship. The request should be made in-writing to the Director, Office of Administrative and Research Services.

## **RECORD KEEPING**

The FLSA requires every employer to make and preserve records of employees' wages, hours and other conditions of employment.

The Department of Labor (DOL) regulations specify the information that must be kept by employers for each employee. There is no requirement that this information be recorded in any particular form. The required information can be maintained in either employee personnel files, payroll records, work unit time records, or a combination of these. The DOL requires that FLSA mandated records which are maintained in a central office, other than the place of employment, be available for that employee upon seventy-two (72) hours notice from the DOL.

Employers must maintain records containing the following information:

	<i>Information required for all employees</i>	Non-exempt	Exempt
1.	Name;	yes	yes
2.	Home address;	yes	yes
3.	Date of birth if under 19;	yes	yes
4.	Sex and job classification;	yes	yes
5.	<i>Time of day and day of week on which employee's workweek begins;</i> (See Attachment C)	yes	yes
6.	Regular hourly rate of pay for any week when overtime is worked and overtime compensation due, together with the basis on which wages are paid and the amount of each payment;	yes	no
7.	Hours worked each workday and each workweek;	yes	no
8.	Total daily or weekly straight-time earnings or wages;	yes	no
9.	Total overtime excess compensation for the workweek;	yes	no
10.	Total additions to or deductions from wages paid during a pay period along with the amounts, nature and dates of said additions or deductions;	yes	no
11.	Total wages paid each pay period; and	yes	yes
12.	The date of payment and the pay period covered by the payment for regular and overtime wages.	yes	yes
13.	The basis on which wages are paid including fringe benefits and prerequisites.	no	yes

*Note: All of the above are maintained by the Controller, with the exception of No. 5. That record must be maintained by the department.*

### ***Preservation of records***

The following documents must be preserved for three (3) years:

- Payroll records; *(maintained by Controller)*
- Collective bargaining agreements and all amendments or additions thereto; *(maintained by OARS)*
- Employment contracts; if any, *(N/A)*
- Certificates or notices prepared in regard to the application and implementation of the FLSA. *(OARS and departments)*

The following documents must be preserved for two (2) years:

- Wage rate tables or salary schedules; *(maintained by Controller)*
- Records of additions to or deductions from wages paid; *(maintained by*

*departments and Controller)*

- Basic employment, earnings records and work time schedules which include daily starting and stopping times of employees; *(maintained by departments)*

### ***Posting requirements***

Departments must display FLSA notices pertaining to the minimum wage and maximum hour requirements of the act in conspicuous places where employees work. Failure to post such notices can subject an employer to additional liability if violations of the Act are found to occur. Please contact the OARS' Employee Relations Division to obtain additional Notices at (213) 485-5253.

### **EXEMPT SALARIED EMPLOYEES**

Departments are reminded that exempt (salaried) employees (see appropriate MOUs for definitions) must be paid for a full FLSA workweek. Such employees can only be suspended without pay in increments of a full FLSA workweek (40 hours), unless the suspension is as a result of violation of a major safety rule. Exempt employees cannot be subject to reductions in pay or temporary demotions. Strict adherence to this requirement is necessary to preserve the employee's exempt status. However, this does not affect the ability of a Department to require an exempt employee to use accrued sick leave or vacation time to cover absences of less than a full workweek.

Exempt (salaried) employees, with the permission of their supervisors, are allowed absences during the work day without partial day deductions. Such absences can be for any purpose, and the exact purpose need not be disclosed by the employee. However, public employers may require salaried employees to be accountable for their time by requiring employees to work specific hours, and to record their time worked including compensated absences. While salaried employees do not receive overtime, the appointing authority of each City department may grant time off for hours worked due to unusual circumstances.

### **DEPARTMENT OVERTIME POLICY**

Each department is required to adopt an overtime policy that conforms with this Bulletin and also specifies the department's overtime procedures and practices. A draft policy is included as Attachment D and is recommended for use by departments. Any revisions thereto must be reviewed and approved by OARS' Employee Relations Division prior to the revised policy's implementation.

### **COMPLIANCE AUDITING**

Departments must develop review procedures to ensure that the overtime policy is fully implemented and consistently applied. Any errors discovered should be rectified as soon as possible after they are found.

OARS, in conjunction with the Controller's Office, will develop procedures for compliance auditing citywide. These procedures will be communicated under separate cover. It is anticipated that the auditing procedure will require each general manager to certify annually that his/her department is in full compliance with this Bulletin.

## **ATTACHMENTS**

A series of attachments will be developed to clarify this Bulletin. Included at this time are the following attachments:

- A. Computing Overtime Upon Transition of an Employee to a New Department or Work Schedule
- B. Employee Relations Bulletin dated June 26, 2000 on holidays.
- C. Workweek Record Keeping Policy
- D. Overtime Policy

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**COMPUTING OVERTIME UPON TRANSITION OF AN EMPLOYEE  
TO A NEW DEPARTMENT OR WORK SCHEDULE**

Departments are responsible for determining the workweek for their employees by defining the 7-day, 168 hour period. It can begin and end on any day of the week and any hour of the day. Departments may have all of their employees on the same workweek, or have groups of employees or even individual employees on different workweeks. (See the Employee Relations Bulletin dated March 27, 2001).

Once established, the workweek may not be changed indiscriminately to avoid the payment of overtime. However, it may be changed if the change is meant to be permanent. Examples of permanent changes include transferring/promoting to other departments or changing a schedule to accommodate a personal or operational change. (Changes should not occur more frequently than every six months to a year.) When a change is made the two overlapping workweeks must be monitored as follows:

1. First, compute the hours worked in each week, assuming the hours worked during the overlapping period belong only to the first week.
2. Next, recompute the hours for each week, assuming the overlap is part of the second week only.
3. The employee must receive the greater amount of overtime pay (if any) resulting from the alternative calculations in (a) and (b) above.

EXAMPLE: Old workweek - Sunday through Saturday  
New workweek - Thursday through Wednesday

-----Old Workweek-----											
<u>Sun</u>	<u>Mon</u>	<u>Tue</u>	<u>Wed</u>	<u>Thu</u>	<u>Fri</u>	<u>Sat</u>	<u>Sun</u>	<u>Mon</u>	<u>Tue</u>	<u>Wed</u>	
8	8	8	8	8	8	0	0	8	8	8	
						-----New Workweek-----					

- a. Assume the 16 hours worked on Thursday and Friday are part of the old workweek; 48 hours were worked in one and 24 hours in the following week. Eight hours of overtime are due.
- b. Assume the 16 hours worked on Thursday and Friday are part of the new workweek; 32 hours were worked in the first week and 40 hours in the following week. No overtime is due.



- c. Since more overtime pay is due using the old workweek the employee is due eight hours of overtime pay.

Note: The same analysis must be made for changes in the work schedule, e.g., going from 5/40 to 9/80, 9/80 to 5/40 or 4/10, or for any other change which results in an incomplete week.

Only hours worked are counted in this calculation. Hours compensated, but not worked (e.g., sick leave, holiday pay, vacation, compensated time off) are not counted. To reduce any overtime liability, changes in the workweek should be timed to occur during a period where fewer than 80 hours will be worked.

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