



Hours Worked Fact Sheet for Hourly Paid Employees

This fact sheet provides general information and clarification for compliance with university policy and federal regulations within the Fair Labor Standards Act (FLSA) pertaining to defining hours worked and overtime pay for hourly paid employees.

Please note, this document is for informational purposes only and is not intended to replace or alter any of the practices, notices, policies, regulations, or laws that cover the FLSA. It does not provide any rights or privileges beyond what is provided in university policies. If this guidance conflicts with any university policy, the university policy controls.

Supervisors and employees are encouraged to contact Human Resources with any specific questions regarding Hours Worked.

FAIR LABOR STANDARDS ACT (FLSA)

The FLSA is a federal law governing several time and labor issues. It establishes minimum wage, overtime pay, record keeping and child labor standards affecting millions of full-time and part-time workers in the private sector as well as in federal, state, and local governments.

The Fair Labor Standards Act categorizes employees as either exempt or non-exempt, meaning they are either exempt (not covered) under the regulation based on duties and salary tests contained within the Act or non-exempt (covered) under the regulation. The exempt employee is usually paid on a salary basis and does not receive extra compensation for overtime hours worked. A non-exempt employee is paid on an hourly basis and receives time and one-half overtime compensation for all hours worked over 40 in a work week. The FLSA allows public employers to either pay or give compensatory time off to an employee, at the employee's discretion, for overtime hours worked, both at a time and one-half rate.

To summarize, an exempt employee is not paid overtime and a non-exempt employee is paid overtime. A non-exempt employee must be paid for hours worked.

HOURS WORKED

University policy directs that hourly paid full-time employees will normally work and be paid for 40 hours during the work week, which begins at 11:01 p.m. Thursday and continues through 11:00 p.m. the following Thursday.

When an employee performs work for the university, it is considered hours worked. There are special circumstances and guidelines that assist with defining hours worked in the following sections. For the purposes of this document and related university policies, the phrases "compensable work time," "time worked" and "hours worked" have the same meaning.

OVERTIME

All hourly paid employees (including part-time employees) working more than 40 hours in one work week shall receive overtime compensation. This may be in the form of overtime pay or compensatory time, both granted at one- and one-half hours for every hour worked over 40. In calculating overtime pay, only hours worked are included. Paid leave (vacation, sick, holiday, administrative, compensatory time off, etc.) does not count toward hours worked when calculating hours for overtime or compensatory time off. Working more than 40 hours per week and earning overtime or compensatory time off must be approved by a supervisor in advance.

University of Nebraska law enforcement employees may be compensated for overtime for working more than 80 hours in a 14 consecutive day work period.

PERFORMING WORK WITHOUT PAY

An hourly paid employee cannot perform work without being paid. There are situations that are easily misunderstood regarding hours worked and work schedules which can lead to employees inadvertently performing work without being paid. The following examples are provided for clarity on paying for hours worked. An employee typically must be paid if the employee:

- works outside of the normal work schedule;
- extends the workday by starting work early, staying late to perform work or working through lunch;
- takes work home or prepares materials or other items for work at home;
- works during a work-related event on or off site; or
- performs special tasks that are related to university activities or programs even if the tasks are not the normally assigned work duties.

All the examples above and any similar situations that are considered hours worked must be approved in advance by a supervisor.

RECORDKEEPING

For all hourly paid employees, all hours worked must be recorded on a timecard or in a time entry system and must be recorded during the workweek they are worked. Work schedules and hours worked must be approved by a supervisor in advance. Work performed that is more than or less than the scheduled hours must be recorded.

CHANGE IN WORK SCHEDULE

A supervisor may approve a change in a work schedule thereby allowing an employee to work hours different from the normal schedule. All hours worked must be recorded during the workweek they are worked. Examples are provided below to illustrate proper record keeping as well as a common recordkeeping mistake when a change in work schedule is approved.

Example 1: The employee normally works Monday – Friday, 8:00 a.m. – 5:00 p.m. with a one-hour lunch. During one work week, the employee is approved to work 6 hours on Monday and 10 hours on Tuesday. Hours worked should be recorded as follows:

Day of the week	Hours worked
Friday.....	8
Monday.....	6
Tuesday.....	10
Wednesday.....	8
Thursday	8
Total Hours	40

Example 2: The employee normally works Monday – Friday, 8:00 a.m. – 5:00 p.m. with a one-hour lunch. The employee is approved to work a different schedule of 10 hours on Thursday and then 6 hours on Friday because the employee has requested to leave early on Friday. It is important to consider the university work week when approving a different work schedule and the effect on overtime. A common mistake is that the hours worked are recorded as they are normally scheduled to work (which would be eight hours on Thursday and eight hours on Friday) rather than the actual hours worked. This is a mistake because:

- Actual hours worked must be reflected on the timecard accurately.
- Overtime compensation laws require that an employee must be paid for hours worked over 40 in the work week based on when the hours are worked.
- Full-time employees must either work 40 hours or use applicable paid leave to total 40 hours of pay for the week.

The correct hours worked are recorded as follows:

Work Week 1	Hours Worked	Work Week 2	Hours Worked
Friday	8	Friday	6
Monday.....	8	Monday.....	8
Tuesday	8	Tuesday.....	8
Wednesday	8	Wednesday.....	8
Thursday.....	10	Thursday	8
Total Hours	42	Total Hours	38

Note that in this example, the employee is required to be paid for 40 hours in week two by university policy, therefore the employee must either work two hours, use two hours of vacation, or use accrued compensatory time to total 40 hours of pay for the week. A best practice when considering a schedule change is to perform the work within the same work week to eliminate overtime (or earning compensatory time) and to avoid requiring the use of paid time off in the week that is short of 40 hours.

HOURS WORKED - QUICK REFERENCE GUIDE

The following table provides guidance on common work situations and indicates if the situation is considered hours worked. Further explanation for each situation is explained within this document.

Type of situation	Is It Hours Worked?
24/7 Operations	Sometimes
Alternative Work Site/Working from Home	Yes
Changing Clothes	Yes
Cleaning Tools & Equipment	Yes
De Minimis (insignificant amount of time)	No
Lunch Break	No
On-Call (off premises)	Sometimes
On-Call (on premises)	Yes
Performing work	Yes
Rest Period	Yes
Show up Time	No
Sleep Time	Sometimes
Training Time and Meetings	Sometimes
Travel	Sometimes
Waiting Time (off duty)	No
Waiting Time (on duty)	Yes

REST PERIOD

Rest periods are considered hours worked. Work schedules provide for one paid 15-minute rest period for each consecutive four hours worked. There is no compensation for rest periods not taken. If conditions warrant, employees may be asked to work through the normally scheduled rest period. Rest periods may not be "saved" to shorten the employee's workday, to extend lunch breaks, or to alter the work schedule in any way. Rest periods not taken will be forfeited.

LUNCH BREAK

A lunch break, when an employee is performing no work, is not considered hours worked. Work schedules for hourly paid staff normally include an unpaid lunch break of at least 30 minutes. However, if an employee works during lunch, it is considered hours worked.

TRAVEL

Home to Work: Travel from home before the regular workday and returning home at the end of the workday, which is ordinary home to work travel, is not hours worked.

Travel That is All in a Day's Work: Time spent by an employee in travel as part of the principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

Voluntary Workshop/Seminar: When a unit approves an employee's voluntary attendance at a work-related workshop or seminar, the time spent in attendance and travel during normal working hours is considered administrative leave. Time extending beyond regularly scheduled working hours is not considered as compensable time.

Required Workshop/Seminar—One Day: Time spent in attendance and travel for required workshops is considered time worked when time is confined to one day.

Required Workshop/Seminar—Overnight: For an overnight required activity, travel time during the employee's usual working hours, both for workdays and non-workdays (e.g., Saturdays, Sundays, or holidays), is considered time worked. Travel time as a passenger outside normal working hours is not compensable, but for an employee who is required to drive, the entire travel time is considered time worked.

24/7 OPERATIONS AND SLEEPING

This section applies to 24/7 operations and employees who stay and/or sleep on university property or while on university business.

Less Than 24-Hour Shift

An employee who is required to be on duty for less than 24 hours is working, even though the employee is permitted to sleep or engage in other personal activities when not busy. An employee who is required to be on duty for specified hours is working even though the employee is permitted to sleep when not busy. It makes no difference that the employee is furnished facilities for sleeping.

24-Hour or More Shift (not residing on premises)

When an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of no more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period is more than eight hours, only eight hours will be credited.

Where no expressed or implied agreement to the contrary is present, the eight hours of sleeping time and lunch periods constitute hours worked. If an employee's sleep time is interrupted to perform work and the employee does not get a good night's rest (defined as a minimum of five hours of sleep), the employer cannot take any sleep time credit and must count all time, including any hours the employee slept, as hours worked. If the employee is required to perform work during sleeping time but is otherwise able to get a good night's rest (more than five hours of sleep), the employer only needs to pay the employee for the time the employee actually worked.

Residing on Premises or Working at Home

An employee who resides on the employer's premises on a permanent basis or for extended periods of time is not considered as working all the time the employee is on the premises. The time that is considered as hours worked are those hours when an

employee is performing duties for the employer. Ordinarily, the employee may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when the employee may leave the premises for purposes of the employee's own choosing. Employers are not typically required to pay employees for sleeping time if the employee resides on the employer's premises or works from home.

WAITING TIME

On-duty waiting time is considered hours worked. It is time spent by an employee, typically during normal work hours, waiting for direction from a team lead, supervisor, or manager.

Off-duty waiting time is not considered hours worked. These off-duty periods occur when an employee is completely relieved from job duties, can leave the workplace, and can effectively use the time for the employee's own personal purposes.

ON-CALL TIME AND CALL-BACK TIME

An employee who is required to remain on-call on the university premises is working. An employee who is required to remain on-call at home or off-premises, or who is allowed to leave a message where he/she can be reached, is not typically working while on-call. Work performed during the established on-call time, such as working from home, answering a phone call, or returning to the work site (call-back time), is considered hours worked.

As approved by Human Resources, unit-specific written policies may include any minimum amount of time paid for time worked or call-back time during on-call time. A unit that would like to implement an on-call policy that includes requiring a restriction on location or a specific response time, etc. should work with Human Resources to determine compliance requirements.

ALTERNATIVE WORKSITES OR WORKING FROM HOME

Units may wish to consider allowing some employees to perform job responsibilities from home or another alternative worksite. Depending on the work assignment, this may be appropriate for both Office/Service and Managerial/Professional employees. This arrangement should be authorized by the supervisor in advance of performing work from home or at an alternative worksite. In this arrangement, hours worked are calculated and recorded in the same manner as when an employee is working on site.

SHOW UP TIME

There may be some instances where an employee arrives to work (considered "show up time"), as directed by the supervisor, only to be sent home before any work is performed. Typically, this time is not considered as time worked.

CHANGING CLOTHES

Time spent at the work site changing clothes is considered as hours worked if the change of clothes is required by the nature of the job.

CLEANING TOOLS/EQUIPMENT

Time spent in oiling, cleaning, or otherwise preparing tools or machines for use (either before or after normal working hours) is considered hours worked if these activities are necessary to the employee's principal responsibilities.

TRAINING TIME AND MEETINGS

Training and meetings for which attendance is required are considered hours worked. Service on campus and/or university-wide committees performed at the request of the chancellor or other administrative personnel is considered hours worked.

Attendance at lectures, meetings, training programs and similar activities is not considered hours worked if four criteria are met, namely: it is outside normal business hours, it is voluntary, it is not job related, and no other work is concurrently performed.

Attendance at meetings of Faculty Senate, University Association for Administrative Development (UAAD), or University of Nebraska Office Professionals Association (UNOPA) held during the lunch hour is not considered hours worked. If the meeting extends beyond the time normally allotted for the lunch period, the employee should use normal departmental procedures to request time away from work. Time approved in such circumstances is administrative leave.

When a unit approves an employee's voluntary attendance at a work-related workshop or seminar, the time spent in attendance and travel during normal working hours is considered administrative leave. Time extending beyond regularly scheduled working hours is not considered hours worked.

DE MINIMIS

Infrequent and insignificant periods of time beyond the scheduled working hours, which cannot as a practical matter be precisely recorded for payroll purposes, may be disregarded. Such periods of time are de minimis. This rule applies only where there are uncertain and indefinite periods of time involved, a few seconds or minutes in duration, and where the failure to count such time is justified by industry realities. While it is difficult to include all instances that might be considered as de minimis, the following examples are provided for clarification:

- Merely thinking about work during off shift hours. However, an employee will be paid for work authorized and assigned during off shift hours that requires developing, researching, and assessing work related tasks.
- Checking work related email or voice mail for a few minutes a few times per day when not assigned to perform these tasks. Checking work related email for more than a few minutes a few times per day is considered hours worked and must be approved by a supervisor in advance. Best practice is to record time spent checking email to determine if it is de minimis.
- Returning from a lunch period a few seconds or minutes early.
- Leaving the worksite at the end of the shift for the workday and immediately returning to the worksite to retrieve a forgotten item.
- After clocking in, an employee transports his/her tools to a job site for a few minutes and then informs the supervisor of an illness without performing work or clocking out.

QUESTIONS

Supervisors and employees are encouraged to contact Human Resources with any questions regarding this Fact Sheet or specific questions regarding Hours Worked.