



ADMINISTRATIVE PROCEDURES

Procedure Number: 23-40

Effective Date: 09/23/2009

Revision Date: 10/13/2010

C. DeLubben
County Administrator

SUBJECT: **FLSA AND WORK TIME**

DEPARTMENT RESPONSIBLE: **Human Resources Department**

I. STATEMENT

The purpose of this procedure is to discuss the topic of time worked as defined in the Fair Labor Standards Act (FLSA) and to ensure that all departments are aware of the requirements for reporting and paying for time worked by nonexempt employees. The U.S. Department of Labor (USDOL), Employment Standards Administration, Wage and Hour Division, sets forth such requirements. All department heads, managers and supervisors are directed to read the publication entitled Handy Reference Guide to the Fair Labor Standards Act. This publication is available on the Internet on the Wage and Hour Division Homepage at the following address: <http://www.wagehour.dol.gov>.

II. PROCEDURES

Hours worked - Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday. Also included is any additional time the employee is allowed (i.e. suffered or permitted) to work.

The employer must pay the employee when he works. Relevant information from the USDOL guide and from Pima County's Personnel Policies are stated below.

Pursuant to the Fair Labor Standards Act (FLSA), covered, nonexempt employees must be paid overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek. Pima County has implemented one and half times pay for hours worked over 40 hours in a workweek pursuant to Personnel Policies 8-102.A.2 and 8-102.C. Also, the workweek is defined in Personnel Policy 8-102.A.4.

This has been the standard for some time. It appears that some confusion occurs when an employee is engaged to work or is working while on his or her lunch or his or her own time. Whether or not permission was given, a nonexempt employee must be paid for time that he or she is working to include eating while working at the same time. Work is the primary determining factor and not the activity of eating. Some common examples of this and other matters are as follows:

Example 1: A department holds a departmental luncheon, whether paid for by the department or not, and the employee is eating lunch and work-related activities occur simultaneously. The department may or may not mandate that the employee attend this work luncheon. As long as there is work being performed that is related to the employee's job or the employee is engaged to work, this is considered work time in spite of the activity of eating. Unpaid lunchtime is the time that the employee is off the clock and therefore the employee is on his or her own time with the freedom to go where he or she chooses. Time records for nonexempt employees must be noted with the in and out time for unpaid lunch. In summary, if the employee is nonexempt and work and eating occur simultaneously, the employee must be paid. This does not include luncheons that are extracurricular to the employee's assigned work and where the employee has an option as to whether or not to attend.

Example 2: A nonexempt employee rides from one work location to another work location and is eating his or her lunch with or without permission. This is work time and if the employee did not stop work to take his or her lunch, the employee must be paid for this time. If the time doing so results in the employee working more than 40 hours as defined in our personnel policies, the employee must be paid overtime. If it does not result in the employee working more than 40 hours as defined in our personnel policies, the employee is paid straight time for this work time. The department does have the option to flex the employee's time when the employee works more than eight hours in a day by reducing the hours later in the same workweek.

Example 3: A nonexempt employee accesses the County cell phone or the County computer system from home or through email and engages in work, the employee has engaged in work. If he or she does not clock out and immediately heads into work, then his or her time starts from the moment that the employee started talking on his or her County phone or logged into the County computer system for work purposes.

It is best practice for departments to ensure that nonexempt employees understand when their workday begins. Employees should be notified that any unauthorized access prior to or after work time, or during lunch, will be subject to disciplinary action, up to and including dismissal. In short, if the employee works without permission, he or she must be paid for that time and may be disciplined for violating County policies. Also, see Personnel Policy 8-102.C.3., which requires that an employee work overtime when authorized by the Appointing Authority or designee.

Travel Time: There are many scenarios that occur when the covered, nonexempt employee is on travel time for work purposes. An employee will not be paid for time going to work or from work to home, unless the employee started working before leaving home or continued working when he or she arrived home, and there are no "clock in and clock out" procedures. "Clock in and clock out" procedures must be in writing. For purposes of this procedure, home may include any other non-work location.

Departments must contact Human Resources for questions regarding the FLSA and work time. County policies determine when time worked or when time taken as leave is calculated as overtime. Also, refer to Finance and Risk Management's procedures or contact Finance and Risk Management for proper timekeeping using the Time and Attendance Form (TAF) or other method of timekeeping.

Breaks and Meal Periods - Federal law does not require lunch or coffee breaks. However, when employers offer short breaks (usually lasting 5 to 20 minutes) federal law considers the breaks be compensable work hours and included in the hours worked during the work week for determining if overtime was worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and that any extension of the break time be cause for discipline.

Reasonable Break Time for Nursing Mothers – For a maximum of one (1) year after the birth of a child, nursing mothers may take reasonable break time, whenever necessary, to express breast milk. Such breaks are not paid time. In those circumstances where paid breaks are provided, an employee who uses that break time to express milk will be compensated in the same manner that other employees are compensated for such break time. Break time utilized by nursing mothers to express milk that exceeds the amount of time allowed for other work breaks is not an unscheduled absence. Appointing Authorities are required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

Bona fide meal periods (typically lasting at least 30 minutes) serve a different purpose than coffee or snack breaks. Meal periods are not work time and are not compensable, provided the employee performs no work during that lunch break.

III. **RESPONSIBILITY**

All departments are responsible for ensuring that covered nonexempt employees are compensated in accordance with the Fair Labor Standards Act (FLSA).