

FLORIDA TECH  
OFFICE OF HUMAN RESOURCES

MEMORANDUM

To: Vice Presidents, Deans, and Department Heads

From: Gary Meiseles  
Director of Human Resources

Date: January 28, 1994

Subject: Leave Usage and Time Reporting for Salaried/Exempt and  
Hourly/Non-Exempt Employees

We receive frequent inquiries regarding the proper method to report sick and/or vacation leave usage for salaried/exempt and hourly/non-exempt employees. This document will provide guidance about how to report time and leave usage for both salaried/exempt and hourly/non-exempt employees.

By way of background, the Fair Labor Standard Act (FLSA) is a Federal law that defines minimum wages, overtime pay, equal pay for equal work, and child labor standards. Based upon the detail provided in the FLSA, some employees are determined to be “exempt” from the overtime requirements of the FLSA, therefore the term “exempt employee.” At Florida Tech, we use the term “salaried employee” as an equivalent to “exempt employee.”

“Non-exempt” employees (“hourly employees” in Florida Tech terminology), are not exempt from the overtime regulations of the FLSA, therefore the term “non-exempt” employee. Consequently, anytime an hourly/non-exempt employee works more than 40 hours in a pay week, the employee **must** be paid at the overtime rate of time-and-one-half of the regular hourly rate of pay for all hours worked over 40. Overtime calculations are based upon a defined pay week, not a biweekly pay period. The University’s pay week runs from 12:01 a.m. Sunday to midnight the following Saturday.

For example, an hourly/non-exempt employee who works 45 hours in week one of a two-week pay period and 35 hours in week two of a two-week pay period is owed overtime for the five (5) hours worked over 40 in the first week of the pay period. While true that the employee physically worked only 80 hours in a biweekly pay period, overtime is based on the defined pay

week not an average of the hours worked in a two-week pay period. Note that the overtime rate is not applied until the employee physically works 40 hours.

As another example, if an hourly/non-exempt employee works eight hours per day Monday through Thursday, is on sick leave for eight hours on Friday, and then works eight hours on Saturday, the overtime rate does not apply to the Saturday hours since the employee physically worked only forty hours. In this example, the employee would be paid 32 hours for the work performed Monday through Thursday, 8 hours of sick leave for Friday, and 8 hours for the work on Saturday. The total for the week would be 48 hours of straight time ( $32+8+8=48$ ). If the employee in this example was not sick on Friday, and worked his/her regular schedule, the pay would be for 40 hours of work performed Monday through Friday and time-and-one-half for 8 hours of work performed on Saturday, for a total of 52 hours of pay for the week  $\{40+(8*1.5)=52\}$ .

**Federal laws do not permit the use of compensatory, or “comp” time for hourly/non-exempt employees.** If an hourly/non-exempt employee works more than 40 hours in a pay week, they **must** be paid for those hours at the rate of time-and-one-half of their regular hourly rate of pay.

Some flexibility does exist within the pay week. For example, if an hourly/non-exempt employee is working on a project early in the week and has physically worked 40 hours by the end of the day on Thursday, the employee may be permitted to take the rest of the week off without additional pay. In this way an overtime situation is avoided. However, if the employee works any hours on Friday or Saturday, those hours **must** be paid at the overtime rate.

Full and/or partial day absences for hourly/non-exempt employees should be charged to the appropriate leave category of sick or vacation leave provided sufficient leave is available. If leave is not available, absences are unpaid and the employee is “docked” for that time.

Federal enforcement activity defines the proper policy for full and/or partial day absences for salaried/exempt employees:

Full-day absences should be charged to available sick and/or vacation leave. If a person is sick for a full-day and has accrued only four (4) hours of sick leave and four (4) hours of vacation leave, both the sick and vacation leave would be reported to account for the full-day absence. If a person is on vacation for a full-day and only has four (4) hours of vacation leave, only the vacation leave would be reported and the employee would be docked four (4) hours. A partial-day dock is permissible under these conditions. Sick leave may not be used for vacation/personal absences but vacation leave may be used for absences due to illness.

Full-day absences when the employee does not have sick or vacation leave available (either due to prior use of the leave or because the employee is in the waiting period for leave usage) should be reported as docked hours. Reduction in wages for a full-day absence when leave is not available is permissible under Federal guidelines.

Partial-day absences (defined as any absence less than a full-day) would be reported as hours worked. By definition, a salaried/exempt employee may not have his/her wages reduced for partial-day absences and Federal enforcement activity includes vacation and sick leave in the definition of wages for a salaried/exempt employee.

Salaried/exempt employees are expected to work until a particular task is completed or goal accomplished; be that forty hours in a week or sixty hours in a week. In fact, the FLSA defines payment on a salary basis as follows:

An employee will be considered to be paid “on a salary basis” within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is **not subject to reduction because of variations in the quality or quantity of the work performed** ... the employee must receive his full salary for any week in which he performs any work **without regard to the number of days or hours worked** (emphasis added).

The FLSA provides exceptions to the above definition of “salary basis” when reductions in salary are made due to full day absences for sick or personal reasons.

Based upon this information, a supervisor should not attempt to withhold pay for deficiencies in the quality or quantity of work produced by a salaried/exempt employee. Disciplinary procedures have been established to provide supervisors with a method by which they may deal with an employee’s performance problems. The question of discipline is an individual matter that is based upon the specific circumstances of the employee involved. Managerially, we should all endeavor to treat employees equally.

Effective 12:01 a.m. Sunday, January 30, 1994 leave usage for partial day absences for salaried/exempt employees must be reported in a manner consistent with this memorandum. Adjustments for previously reported leave usage that is inconsistent with this memorandum will not be granted.

Questions about appropriate discipline, aspects of the FLSA, or this memorandum should be directed to this office.