



UNIVERSITY SYSTEM OF GEORGIA GUIDELINES SUMMERIZING FLSA HOURS WORKED REGULATIONS

OVERVIEW

This document summarizes the federal laws and USG policies related to when a non-exempt employee must be compensated. This document is not meant to be exhaustive and focuses primarily on the following situations which may be frequently encountered in an institutional setting:

<ul style="list-style-type: none"> • Hours Worked • Travel Time • Training and Conferences • Meals and Breaks 	<ul style="list-style-type: none"> • Waiting Time • On-call time • Sleep time
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HOURS WORKED

Hours worked include hours during which an employee is actually performing productive work as well as the hours when no work is performed but the employer requires the individual to remain available for the next assignment. Such work may be performed at the employer’s premises, an employer related job site as well as working at home. An employee must be compensated for all “hours worked” for the employer regardless of where the work is performed. Additionally, nonexempt employees responding to work emails, working on projects from home after hours, attending work related trainings or who are on-call or traveling for the job are entitled to compensation for such time.

The following listing is not all-inclusive but may be useful as a guide in determining the nature of hours worked. Expanded details and examples on several of the summarized items are included in the remainder of this document.

Work Time	Not Work Time
Principal activities and preparatory work associated with principal activities.	Absences and paid leave time including: (1) Vacation time; (2) Military training leave; (3) Sick leave time; (4) Holidays not worked; (5) Jury duty time; (6) Compensatory time off; (7) Voting time
Meal periods: (1) if employees are not free from performing job duties; (2) if too short to be useful to employees (1/2 hour usually required).	Meal periods involving no duties and lasting ½ hour or longer.
Training programs required by employer.	Training program voluntarily attended, outside of working hours, unrelated to regular duties, and involving no productive work.
Time spent traveling during normal work hours. Outside of normal work hours, time spent as a driver of a vehicle during overnight travel.	Traveling: (1) from home to airport or other terminal; (2) from home to work site and vice versa; or (3) on overnight trips as a passenger outside of regular working hours (unless performing job related duties).
Scheduled On-Call time where an employee is required to restrict personal activities such that the employee cannot use his/her time effectively for their own purposes.	Scheduled on-call time where employee merely leaves telephone number or carries a paging device. Employees required to reside on employer’s premises when not on duty.
Job-related medical attention during work hours at employer’s direction.	Medical attention which is not job related.
Charitable/volunteer work requested or controlled by employer.	Charitable/volunteer work not requested or controlled by the employer.

Refer to the University System of Georgia HRAP Emergency Call Back Pay and Variant Pay and State Payment of Overtime and Granting of Compensatory Time Policy in Appendix 3 for additional information.

TRAINING TIME

Generally, when the employer permits or requires a non-exempt employee to attend training, lectures, or meetings, such time is considered worked unless all of the following criteria are met:

- 1) attendance is outside of the employee's regular work hours;
- 2) attendance is voluntary;
- 3) the course, lecture, or meeting is not directly related to the employee's job; and
- 4) the employee does not perform any productive work for the employer during such training.

MEAL AND BREAK TIME

Federal law does not currently require employers to provide meal, lunch, or break periods for their employees. However, federal law requires an employer who chooses to and grant employees non-meal rest period (usually lasting 20 minutes or less) to pay employees for their break time. Also, if an employer grants employees a bona fide meal or lunch period (usually lasting 30 minutes or more), an employer does not need to pay for the break time so long as the employee is free to do what they wish while on break. Please note that these stipulations do not apply to Law Enforcement Officers on duty who are effectively working at all times during their shift.

Employers can implement policies to prevent employees from working during unpaid meal or lunch periods, such as requiring employees to eat lunch away from their workspace, to ensure they will not be held responsible for paying employees during that time.

EXAMPLE. An employee is scheduled to work from 9:00 a.m. to 5:30 p.m. with 30-minute unpaid lunch break from 12 to 12:30 p.m. For a full week, to meet a deadline, the employee works through her lunch breaks. Her supervisor is aware of the employee's practice of working through lunch and takes no steps to stop it. In this scenario the employer would be required to pay the employee for the time worked during the lunch break, including any overtime hours that may have accrued for the workweek.

GENERAL TRAVEL TIME RULES

When a non-exempt employee is traveling, managers should meet with them to review the travel itinerary and confirm what are considered working hours in accordance with USG policies and DOL regulations. All compensable hours worked during the travel must be recorded and reported to ensure an accurate calculation for payroll purposes.

Employees should be compensated for all travel including:

- Principal activities and preparatory work associated with principal activities;
- Performing work while traveling, e.g. preparing for a meeting, reviewing documents, making telephone calls;
- Time spent by the driver picking up other passengers and transporting them to a specific location;
- Time spent traveling during normal work hours

Employees are generally not compensated for the following travel times:

- Commute time as defined below;
- Commute time where no work is done;
- Per DOL regulation, when a is passenger traveling in a car outside of regular work hours (i.e. before 9am or after 5pm), this time is not required to be compensable. However, institutions have the discretion to compensate these individuals as well if they elect to do so;
- During regular meal period taken during travel where no work is done

COMMUTE TIME

A nonexempt employee's Commute time (when traveling from home to work) is not considered hours worked and not compensable. However, if the employee is required to report to a meeting place where he or she is to pick up materials, equipment, or other employees, or to receive instructions before traveling to the work site, travel time

from the meeting place to the work site is compensable. If the employee stops at the home office for his or her own convenience, the time traveling from the office to the site is not compensable.

TRAVEL DURING THE WORKDAY

Travel as a part of the employer’s principal activity must be counted as hours worked. If the travel is for the benefit of the employer, it is compensable.

EXAMPLE. If an Institution requires its college recruiters to meet on campus before traveling to a recruitment site, the recruiters would be required to include the time spent traveling between the home campus and the recruitment site in the hours worked by each employee. Likewise, hours worked any time spent by any recruiter traveling between two or more recruitment sites during the same workday. The Institution would not, however, be required to include as hours worked time spent by the employee traveling from home to the home campus before traveling to the recruitment site or traveling home from the home campus after the workday is over. It would also not be required to include time spent traveling home from a recruitment site after a workday is over if the employee is not required to return to the home campus.

OUT OF TOWN TRAVEL DURING THE WORKDAY

If the employee is assigned to work in another city for one day and the travel is performed at the employer’s request and for the employer’s benefit, it is part of the principal activity of the employee and therefore is compensable.

However, in this special one-day assignment travel time between the employee’s home and the airport or railway station is home to work travel time and therefore not compensable.

If the employee does not first report to his usual workplace, the employer may also be able to deduct the time the employee usually takes to get to and from work from the time spent traveling to the other city. 29 CFR § 785.37

EXAMPLE. A non-exempt employee whose normal work hours are 8:00 a.m. to 5:00 p.m. in Atlanta is given an assignment to be in Savannah for one day and return that evening. The non- exempt employee leaves the University (or his/her home) at 7:00 a.m., the meeting is over at 3:00 p.m., and the employee arrives back at the University (or his/her home) at 6:00 p.m. In this case, the travel time between 7:00 a.m. to 8:00 a.m. and 5:00 p.m. and 6:00 p.m. is considered as hours worked and the two hours count towards calculating eligibility for overtime over 40 hours. Assuming that the non-exempt employee did not perform any other extra work during the work week, the employee worked 42.0 hours in the work week, and would be eligible for 3 hours of compensatory time.

OVERNIGHT TRAVEL

Travel performed at the request and for the benefit of the employer that keeps an employee away from home overnight is travel away from home. Travel away from home is considered work time when it cuts across the employee’s regular workday hours and is compensable.

Compensable	Non-compensable
If this travel occurs during normal work hours (i.e. 9-5) on regularly scheduled days (i.e. M-F) or non-working days (i.e. Saturday or Sunday) the time is also compensable.	If this travel away from home occurs outside of regular working hours (i.e. before 9am or after 5pm) as a passenger on an airplane, train, boat, bus, or automobile and the employee is free to relax, the time is not considered compensable time.

If the employee is the driver of the vehicle, the employee must be compensated as driving is work time.	Time spent at a hotel with freedom to use time for the employee's own purposes is not compensable.
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Example – Travel outside of normal work hours. If an employee normally works from 8:00 a.m. to 5:00 p.m., an employer is only required to include time spent traveling during that time period as hours worked.

- Time spent traveling before 8:00 a.m. and after 5:00 p.m. would not need to be included – with one caveat, if the employee actually performs work while traveling, the employer must include the time spent working as hours worked. 29 CFR § 785.39
- If an employee normally works Monday through Friday from 8:00 a.m. to 5:00 p.m. and the employee is traveling on Saturday, the employer would be required to count as hours worked the time spent traveling by the employee between 8:00 a.m. and 5:00 p.m. on that Saturday.
- If the employee's travel spans that entire normal workday time period, the employer would be required to include all that time, minus time usually given for lunch or breaks, as hours worked.

EXAMPLE 1. Employee drives to the airport to attend a seminar and has two co-workers as Passengers with him. If the trip is made before or after normal work hours, only the driver receives compensation as only the driver is working. If the trip is made during normal work hours, all three employees are compensated because travel during normal work time is compensable.

EXAMPLE 2. An employee who regularly works from 8 a.m. to 5 p.m. from Monday through Friday is assigned overnight travel. The employee travels on business to a location that requires two hours of travel time.

- 1). The employee leaves Friday at 8 a.m., arrives at the work location at 10 a.m. and works until 5 p.m. on Friday. *The employee should be compensated for 8 hours of work on Friday.*
- 2). The employee begins work at 8 a.m. on Saturday morning, takes an hour meal break, and returns home on Saturday at 2 p.m. Since the employee worked and traveled for 5 hours on Saturday during hours that would be considered normal work hours on a non-working day, the employee would be eligible for 7.5 hours of compensatory time on Saturday (assuming the employee worked more than 40 hours in the work week).

Example 3. An employee who regularly works from 8 a.m. to 5 p.m. from Monday through Friday is assigned work out of town. On Friday, the employee works at his regular job location until 4 p.m. and then travels by bus to an out of town work location, arriving at 6 p.m. The employee should be compensated for 8 hours on Friday, since with overnight travel only the travel time that overlaps the employee's regular working hours must be paid. On Saturday, the employee works from 8 a.m. to 4 p.m. with an hour meal break. The employee then leaves to travel home by bus, arriving at 6 p.m. Since only the travel time that overlaps the employee's regular working hours on a non-working day must be paid, the employee is eligible for 12 hours of compensatory time. (8 hours x 1.5)

WAITING TIME

On-duty waiting time should be counted as hours worked. The employee is generally not allowed to leave the workplace during a period of on-duty waiting time. Essentially, because the employer benefits from having the employee available for immediate engagement in work and the employee is not otherwise able to use the time effectively for their own personal purposes, on-duty waiting time must be counted as hours worked. These on-duty waiting time periods usually last only for a short time and can be unpredictable as to when they occur and how long they will last.

EXAMPLE. Firemen playing a video game while waiting for an emergency call. This example represents a situation where the hallmarks of on-duty waiting time are present: the employee.

- is not engaged in the work for which they were hired;
- remains subject to the direction of his or her employer;
- is not able to effectively use the time for themselves; and
- is unsure as to when the waiting period will occur and/or how long it will last.

Off-duty waiting time does not count as hours worked if the criteria below is met:

- the employee is completely relieved of his or her job duties and is told such by the employer;
- can leave his or her workplace;
- is free to use the time for personal purposes;
- has sufficient time to take advantage of being relieved of all work duties; and
- is aware of the specific time he or she must return to work.

EXAMPLE: An employee who travels across town for a project meeting that ends at 10:00 a.m. and remains across town for a project meeting that starts at 2:00 p.m. would be off duty for the time in between the two meetings if they were not required to perform any job duties and were free to do as they please during that time. Again, critical to the determination of whether waiting time is off-duty and, thus, does not need to be counted as hours worked, is whether the employee meets the criteria listed above.

On Call. The scheduled state of availability to return to duty, work ready, within a specific period of time. When an employee is on-call they are waiting to be called upon by their employer or supervisor to perform a task. This is typically called waiting to be engaged. Some on-call conditions may require the employee to have a cell phone or other means of communication at all times or remain on the employer's premises. Other on-call conditions may restrict the employee's personal activities, or required a specified response time when called upon. Depending on the circumstances some conditions can be non-restricted or restricted; which is generally examined to determine if the on-call time is hours worked.

- **Non Restricted Conditions.** Non-restricted conditions enable the employee to use time effectively for their own personal use while on-call. For example, a help desk professional may be required to carry a cell phone and return to the employer's premises within thirty minutes after being called, but the help desk professional is free to sleep, visit with friends, or go shopping. This is considered non-restricted conditions. In most cases, non-restricted conditions is time an employee can use effectively for their own purposes and therefore is not considered hours worked. 29 C.F.R. § 785.17
- **Restricted Conditions.** Restricted conditions, on-the-other hand, restricts the employee from effectively using the time for personal use. For example, if the on-call help desk professional was required to remain available and take calls from the employer such that the calls prevent free use of time, or the conditions impede the individual from using the time effectively for personal use, then the on-call time could be considered hours worked. 29 C.F.R. § 785.17 Also See HRAP Emergency Call Back Pay and Variant Pay for details on compensation considerations.

SLEEP TIME

Some occupations require an employee to be on the employer's premises and available to work even though there are periods of time when actual work is not being performed and it may be appropriate for employee to spend some time sleeping. Under such circumstances, the federal regulations address when an employer must pay for this sleeping time and include it in overtime calculations as outlined: 1) employees on duty less than 24 hours, 2) employees on duty 24 or more hours, and 3) employees who reside on their employer's premises or who work from home.

Employees on Duty less than 24 hours. An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. This usually occurs when the employer requires the employee to be present on its premises during a shift but the employee is not expected to perform his or her main job duties during the entire shift.

- **EXAMPLE:** A firefighter, when on duty, is typically required to be present at the fire station unless they are responding to an emergency call or performing some other community service. When the fire fighter is not involved in these and other maintenance or safety activities, they may be allowed to sleep. The employer would be required to pay the firefighter for his or her sleep time. This is because the firefighter has forfeited control of his activities to the benefit of the employer who may call on the employee at any time while the employee remains on duty to perform work.

Employees on duty 24 or more hours. Employers must pay employees who remain on duty for 24 or more hours for sleeping time and any bona fide meal periods and include the time in any overtime calculations, unless otherwise agreed to by the parties.

Employees who are required to be on duty 24 or more hours may enter into an agreement with the employer to exclude sleeping time and meal periods from hours worked provided that the employer provides adequate sleeping facilities and that the employee is generally permitted to have 8 hours of uninterrupted sleep.

Additionally, the employer can only take credit for a maximum of 8 hours of sleep time. 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 5 hours of sleep), the employer cannot take any sleep time credit and must count all time, included 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 5 hours of sleep), the employer only need to pay the employee for the time the employee actually worked.

- **EXAMPLE:** A firefighter, when on duty, is typically required to be present at the fire station unless they are responding to an emergency call or performing some other community service. When the fire fighter is not involved in these and other maintenance or safety activities, they may be allowed to sleep. The employer would be required to pay the firefighter for his or her sleep time. This is because the firefighter has forfeited control of his activities to the benefit of the employer who may call on the employee at any time while the employee remains on duty to perform work.

Employees residing on employer's premises or working at home. Employers are not typically required to pay employees for sleeping time if the employee resides on the employer's premises or works from home.

- **EXAMPLE:** When not scheduled to work, Resident Hall Coordinators who may live on site generally has sufficient periods of time in which he or she is free to engage in personal activities or leave the employer's premises for personal reasons. In these situations, the Resident Hall Coordinator would not be compensated for sleeping time although they reside on site. An exception would apply in the situation when an individual is on-line. Refer to the on-call section of this document for more details.

REFERENCE LINKS

Hyperlinks will be added to 29 CFR 785 as well as applicable HRAP and BPM links which apply to any of the content included in this resource document.