

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Overtime

NUMBER: 4:25

The State of South Dakota is considered to be one employer. An employee cannot be both a “paid” employee and a “non-paid” volunteer while performing the same type of work for the same employer. All overtime must be approved prior to the hours being worked.

1. Employees Eligible For Overtime Pay

Employees are determined to be eligible for overtime based on the duties of the individual position. Employees eligible for overtime compensation shall normally be paid in a combination of cash and compensatory time. Exceptions to the normal pay method may be approved by campus leadership if the budget allows. Overtime will accrue at the rate of time and one-half based on a 40-hour workweek. Employees may have their compensatory time carried forward to subsequent pay periods. However, the maximum accumulation of compensatory time is 40 hours with the exception of production workers for the College of Agriculture and Biological Sciences who shall accrue up to 160 hours. Compensatory time exceeding this maximum must be paid or used in the next pay period. Institutional business officers or their designee will make this determination with consultation provided by the Board of Regents Office and the Bureau of Personnel.

A. Work Week

The standard workweek shall be Sunday through Saturday.

B. Overtime Payment

Overtime pay will be computed as actual hours worked in excess of 40 hours, with the exception of a small number of specified staff. In computing overtime hours, holiday hours and leave hours will not be considered as hours worked.

C. Work Week Adjustments

Employees and managers are expected to adjust the workweek whenever possible to avoid an overtime liability. For example, if an employee works 40 hours in the first four days of the normal workweek, every effort should be made to adjust the work schedule so that the employee will not work more than 40 hours. In this example, the employee would not report for work the last day of the workweek.

D. Leave Time

Annual leave, sick leave, court and jury leave, personal leave, military leave, and any other leave time will not be counted as hours worked.

If annual or sick leave in combination with hours worked totals more than 40 hours during the work week, the amount of leave an employee must take should be reduced to bring the total hours paid to 40 hours for the week. If an employee works more than 40 hours, no leave time should be deducted from the employee's balance, with the exception of employees who meet the criteria outlined in the following paragraph. If both sick and annual leave have been taken in a week that requires adjustment of leave, the sick leave should be adjusted before annual leave.

Work schedules will not be adjusted for employees who have reached the maximum annual leave balance and whose annual leave was approved prior to working the overtime. Hours that will prevent the employee from losing that pay period's accrual will be paid. For example, if an employee had prior approval to take annual leave on a Friday and was required to work more than 40 hours Monday through Thursday, the employee should be paid for the amount of annual leave requested that is necessary to prevent a loss of annual leave. Payment to employees with scheduled leave applies only to employees with maximum leave balances.

Employees who are on military leave or court and jury leave will be paid the leave hours at straight time regardless of other hours worked during the week. The leave time will not be counted as hours worked. The appointing authority may require employees to report to work during hours outside of the military or court and jury leave.

E. Holiday Pay

Holiday hours will not count as hours worked for purposes of computing overtime. All overtime-eligible employees who work at least one shift or are on paid leave during the calendar week in which the holiday falls are eligible for holiday pay. For payroll purposes, a holiday is no more than eight hours. An employee who is on leave without pay for the entire week when a holiday occurs will not receive holiday benefits. Employees who are newly hired into the system and who begin work the day after the holiday will not receive the holiday pay hours.

As provided by South Dakota law, an employee must be compensated with time off or cash reimbursement for holiday hours. An employee who is required to work on a holiday may be compensated in one of two ways.

- 1) They could take off an equal number of hours at a later date or
- 2) They could receive straight time paid in cash for an equal number of hours.

For example, overtime eligible employees who work 32 or more hours in a week when an eight hour holiday is observed will be paid straight time for the “extra” hours over 32 and up to 40. If an overtime eligible employee actually works more than 40 hours, exclusive of the eight holiday hours, time and one-half will be paid for those hours over 40.

Part-time employees will receive prorated holiday pay depending upon the average number of hours they have worked in the previous three months of their appointment.

F. Inconvenience Pay

Overtime eligible employees, with the exception of employees covered by law enforcement civil service, who have fulfilled both of the following conditions are guaranteed a minimum of three hours pay regardless of the hours actually worked if:

- 1) The employee has completed the normal shift and left the work place; and
- 2) The employee is unexpectedly required to return to work.

Employees who are called in prior to the beginning of their scheduled shift and are allowed to continue working through the shift are not eligible for inconvenience pay. Only the hours actually worked are used in the computation of overtime.

Up to three hours of inconvenience pay hours (not actually worked) will be compensated as straight time and will not be used to calculate overtime. For example, if an overtime eligible employee has worked for 40 hours, is unexpectedly called back to work, and works for an additional one hour, the employee is paid as follows:

Hours Worked	41
Inconvenience pay hours at straight time	2

If the employee is on-call and the on-call hours are compensable as hours worked, inconvenience pay is not required.

Inconvenience pay does not apply if the employee is not required to actually leave his residence for the work site. For example, employees who can deal with a problem on the phone without leaving the residence are not eligible for inconvenience pay. However, the time spent at the residence dealing with the problem is considered hours worked.

G. On-Call Time

Employees may be required to report to work in their off hours on short notice. If calls to perform work are so frequent or the readiness for work conditions are so restrictive that the employee is not really free to use the intervening periods effectively for his own benefit, the time must be considered hours worked.

Time spent on-call is considered hours worked if the employee is required to remain on the employer's premises or at a location specified by the employer. Employees who use beepers, cell phones and other communicating devices are considered to be not working, and the hours are not compensable. When employees are called out on a job assignment, only the time actually spent working is considered as hours worked. Inconvenience pay for up to three hours may be required. Employees who live at the work site are not eligible for inconvenience pay.

H. Job Related Training

Attendance at conferences, workshops, meetings, or classes is considered hours worked if the State pays travel expenses, registration fees, or tuition or if the employee is not required to take annual leave or leave without pay or to adjust the work schedule. This policy applies to any training for which the State pays, including night classes and continuing education at universities or adult education classes sponsored by high schools, unless all of the following conditions are met:

- 1) Attendance is outside of the employee's regular working hours;
- 2) Attendance is in fact voluntary and not directed or suggested by management;
- 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 during such attendance.

If all of the criteria are met, the training need not be counted as hours worked.

Reduced tuition allowed by SDCL 3-20 does not constitute proof of job relatedness for purposes of determining whether such training should be counted as hours worked.

I. Travel Time

Time spent in travel will be counted as hours worked. Layovers at airports where the employee is not free to pursue personal interests is also included as time spent in travel and counted as hours worked. Actual meeting time outside of the normal work schedule is also considered hours worked.

Hours in which employees are free to do as they please and time spent relaxing and sleeping are not compensable.

Social activities at conferences outside of normal working hours are not considered working time unless the employee has been directed by management to attend the

activity for the purpose of hosting guests or fulfilling a work-related function. For example, if management has directed an employee to coordinate and host a banquet as part of the institution's obligation at a conference, those hours are considered working time. If a volunteering employee attends a banquet at a conference and does not have an assigned role, the hours are not compensable.

J. Recordkeeping

All overtime eligible employees will complete accurate records of hours worked and leave time. The records will reflect the date, number of hours worked, and leave time taken for each pay period.

2. Employees Not Eligible For Overtime

Employees who are exempt from the overtime requirements of the FLSA are not eligible for compensatory time.

A. Leave Time

Employees who are not eligible for overtime compensation are expected to be available to the public, co-workers and subordinates to provide assistance and guidance on policy problems and questions.

Employees who are not eligible for overtime are not required to take annual, sick, personal, military, or court and jury leave for absences of less than a full day except as may be applicable when annual, sick, or personal leave is used as family medical leave. If the employee is absent from the job for a full day during the pay period, some type of leave must be taken, unless prior approval for a leave of absence is obtained.

Employees must continue to obtain approval from their supervisor prior to an absence from work. Managers are expected to set the normal working hours and approve time away from the job for employees not eligible for overtime, regardless of whether leave must be taken. Employees and managers should keep in mind when requesting and approving time away from the job that such employees are compensated not for the amount of time spent on the job, but rather for the general value of services performed. Before time away from the job is approved, managers and employees are expected to ensure that the needs of the public and other state employees who rely on them can reliably be met.

B. Holiday Pay

Non-overtime-eligible employees who work at least one shift or are on paid leave during the calendar week in which the holiday falls are eligible for holiday pay. For payroll purposes, a holiday is no more than eight hours. An employee who is on leave without pay for the entire week when a holiday occurs will not receive

holiday benefits. Employees who are newly hired into the system and who begin work the day after the holiday will not receive the holiday pay hours.

C. Recordkeeping

All employees will submit complete accurate leave records. The records will reflect the date and type of leave time taken for each pay period.

SOURCE: Current Policy Manual 8.6; 8.6.2; BOR, December 1998; BOR, August 2001; BOR, June 2003; BOR, May 2008.