

**SOUTH DAKOTA BOARD OF REGENTS**

**Budget and Finance**

**AGENDA ITEM: 7 – C**

**DATE: October 4-6, 2016**

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**SUBJECT: BOR Policy 4:25 Revision – Overtime (Second Reading)**

At the August 2016 BOR meeting the Board discussed the final rules issued by the U.S. Department of Labor (DOL) on revisions to the Fair Labor Standards Act (FLSA), the new rule goes into effect on December 1, 2016. Currently, the salary threshold for exemptions to overtime pay requirements are \$23,600, this will be increased to \$47,476. The institutional human resources offices have been working on the following items:

1. Meeting with departments and conducting training;
2. Notifying supervisors and employees who will be changed to overtime eligible positions;
3. Conducting analysis to determine if salary adjustments will be made to remain exempt, or be converted to overtime eligible status;
4. Notifying those that are on less than 12 month contracts that they will no longer be on deferred pay, and will only receive payments in the months they are actively working;
5. Evaluating the instructor salaries to determine the entry level minimum salary that can be used as the overtime eligibility threshold for academic administrative personnel such as academic counselors and advisors.

In light of these changes, the human resources leadership has also made recommendations to revisions for BOR Policy 4:25 (Attachment I), this policy regulates overtime, leave and timekeeping. The policy revisions have been reviewed by with RAC, SAC, BAC and AAC, and has had no substantive changes since it was presented at the August BOR meeting; grammatical changes made since the first reading are highlighted in yellow Attachment I. Substantive revisions to the policy are outlined below:

1. Changing the title to Time and Leave Reporting to be more accurate of the content of the policy, this policy also addresses time and leave reporting for overtime exempt employees;

(Continued)

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**DRAFT MOTION 20161004\_7-C:** I move to approve the second and final reading of the proposed revisions to BOR Policy 4:25 as presented in Attachment I.

2. Increasing the compensatory time maximum accrual from 40 to 80 hours, this will allow for departments to manage compensatory time more effectively;
3. Addition of language that explicitly states that supervisors reserve the right to adjust an employee's workweek to manage overtime liability;
4. Clarifying the order that leave should be adjusted in the employee timesheet when time in a workweek exceeds 40 hours;
5. Adding language to direct how administrative leave should be paid for special holidays granted by the Executive Director (non-emergency closings);
6. Addition of language to require that an employee should have prior approval before accessing electronic systems and/or email outside of their normal schedule.

## SOUTH DAKOTA BOARD OF REGENTS

### Policy Manual

**SUBJECT:** ~~Overtime~~ Time and Leave Reporting

**NUMBER:** 4:25

The ~~State of South Dakota~~ South Dakota Board of Regents 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. Failure to comply with any provisions of this policy may subject the employee to disciplinary action, up to, and including termination.

#### 1. Employees Eligible For Overtime Pay

Employees are determined to be eligible for overtime based on the duties and level of compensation 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 forty (40)-hour workweek. Employees may have their compensatory time carried forward to subsequent pay periods. However, the maximum accumulation of compensatory time is ~~40~~eighty (80) hours with the exception of production workers for the College of Agriculture and Biological Sciences who ~~shall may~~ 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 Human Resources.~~ The Board of Regents reserves the right to pay cash, at any time, to the employee for any or all accrued compensatory hours.

##### A. Work Week

The standard workweek shall be from 12:00 a.m. Sunday through 11:59 p.m. Saturday.

##### B. Overtime Payment

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

### C. Work Week Adjustments

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

### D. Leave Time

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

If approved annual leave, ~~or~~ sick leave, or compensatory time are used in any combination with hours worked, and totals more than forty (40) hours during the work week, the ~~amount of~~ leave ~~an employee~~ must ~~take~~ should be reduced to bring the total hours paid to forty (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 multiple types of 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. the adjustments should be applied in the following order:~~

1. Personal Leave
2. Sick Leave
3. Annual Leave
4. Compensatory Time

If an employee works more than forty (40) hours, no leave time should be deducted from the employee's balance, with the exception of employees ~~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. In such situations, H hours that will prevent the employee from losing ~~that~~ the current pay period's annual leave 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 annual leave applies only to employees with maximum annual 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 ~~considered 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 (1) 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 (8) 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 (2) 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 thirty-two (32) or more hours in a week when an eight (8) hour holiday is observed will be paid straight time for the “extra” hours over thirty-two (32) and up to forty (40). If an overtime eligible employee actually works more than forty (40) hours, exclusive of the eight (8) holiday hours, time and one-half (1.5x) will be paid for those hours over forty (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. Administrative Leave**

Administrative Leave may be granted by the Executive Director, or in accordance with BOR Policy 4:40. Administrative leave approved for reasons that do not fall under BOR Policy 4:40 will be paid as follows for overtime eligible employees:

- 1) Employees will not receive administrative leave pay in excess of the scheduled shift, or more than forty (40) hours per week;
- 2) Only leave eligible employees who are scheduled to work during the administrative closing are eligible for paid administrative leave;
- 3) Administrative leave will be granted only for the number of hours the work location was administratively closed, not to exceed the number of hours for which the employee was scheduled to work;
- 4) Employees required to work so essential functions can be performed must report to work at prearranged worksites, unless otherwise instructed. The

procedure for identifying these employees will be established by each institution. Those overtime eligible employees that are required to work will receive payment for the administrative leave hours (at a straight rate) plus the hours they were required to work.

- 5) In the event that administrative leave is granted in less than an eight (8) hour increments, the leave shall be recorded for the number of hours granted, and the remainder of the day will be recorded as regular hours worked and/or the appropriate leave type.

**FG. 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 (3) 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~~ineligible 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 forty (40) hours, is unexpectedly called back to work, and works for ~~one (1) additional hour~~ 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~~their residence for the work site. For example, employees who can deal with a problem on the phone without leaving their residence are ~~not eligible~~ineligible for inconvenience pay. ~~However~~, the time spent at their residence dealing with the problem is considered hours worked.

**GH. 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 or her 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~~ ineligible for inconvenience pay. If an employee is issued an electronic communication device, the issuance does not qualify on its own as compensable on-call time.

**I. Electronic Access**

Except with prior approval, overtime eligible employees may not access Board of Regents electronic systems, or e-mail while they are not at work. Use of remote e-mail or other electronic systems is an obligation to compensate. If an overtime eligible employee does utilize e-mail or other electronic systems remotely, they are required to record their time and enter it into the timekeeping system.

**HJ. 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 ~~by 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~~ considered 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~~ considered as hours worked.

**IK. Travel Time**

Time spent in travel will be ~~considered 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 ~~considered 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~~. considered hours worked.

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~~ hours worked. If ~~a volunteering an~~ employee chooses to attends a banquet at a conference and does not have an assigned role, the hours are not compensable.

**JL. Recordkeeping**

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

**2. Employees ~~Not Eligible~~ Ineligible For Overtime**

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

**A. Leave Time**

Employees who are ~~not eligible~~ ineligible 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~~ ineligible 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~~ineligible 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**

~~Overtime ineligible~~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 (8) 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. Administrative Leave

Administrative Leave may be granted by the Executive Director, or in accordance with BOR Policy 4:40. Administrative leave approved for reasons that do not fall under BOR Policy 4:40 will be paid as follows for employees ineligible for overtime:

- 1) Only leave eligible employees who are scheduled to work during the administrative closing are eligible for paid administrative leave;
- 2) Administrative leave will be granted only for the number of hours the work location was administratively closed, not to exceed the number of hours for which the employee was scheduled to work;
- 3) Employees required to work so essential functions can be performed must report to work at prearranged worksites, unless otherwise instructed. The procedure for identifying these employees will be established by each institution;
- 4) When administrative leave is granted in less than eight (8) hour increments and an employee is absent for the entire day, they will not receive administrative leave for the partial day and must report the appropriate leave type for the workday.

## **~~C~~D. 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, October 2016.