HUMAN RESOURCES

FAIR LABOR STANDARDS ACT COMPLIANCE

Daily Recordkeeping Requirements for Non-exempt Staff Work Time

Nonexempt employees are required by the FLSA to maintain accurate daily records of work time. Therefore, nonexempt employees must record actual hours worked as well as paid and unpaid absences. Time sheets should reflect actual starting and stopping times of work as opposed to the established work schedule. For example, if the work schedule is 9:00am to 5:30pm, but the employee worked 9:15am to 11:30am and from 12:00pm to 5:45pm, these actual hours worked should be recorded.

Exposure for Additional Overtime Payments to Non-exempt Employees

The University's obligation for additional compensation payments to nonexempt employees who participate in a variable pay plan is dependent upon the determination of whether the plan is deemed to be discretionary or nondiscretionary.

Discretionary Versus Nondiscretionary

- A discretionary plan is identified as an employer retaining discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum, if any, to be paid as a bonus is determined by the employer without prior promise or agreement. The employee has no contract right, express or implied, to any amount. If the employer promises in advance to pay a bonus, they have abandoned their discretion with regard to it.

- A nondiscretionary plan is identified as employees being entitled to the additional payment if he/she meets certain predetermined requirements, such as successfully making a "quota". These plans depend on the employer or specified area meeting predetermined goals, such as "profit sharing" triggered by a set revenue figure.

Fair Labor Standards Act Coverage of Nondiscretionary Payments to Nonexempt Employees

- The Department of Labor states, "Where a bonus payment is considered a part of the regular rate at which the employee is employed...," *-- this would include payments from nondiscretionary plans --* "...it must be included in computing his/her hourly rate of pay and overtime compensation."

Method of Inclusion of Bonus in Regular Rate for Nonexempt Employees

- No difficulty arises in computing overtime compensation if the bonus covers only one weekly pay period. The amount of the bonus is merely added to the other earnings of the employee (except statutory exclusions) and the total divided by total hours worked.

- Under many bonus plans, however, calculations of the bonus may necessarily be deferred over a period of time longer than a workweek. In such a case the employer may disregard the bonus in computing the regular hourly rate until such time as the amount of the bonus can be ascertained. Until that is done they may pay compensation for overtime at one and one-half times the hourly rate paid by the employee, exclusive of the bonus.

- When the amount of the bonus can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each workweek that he/she worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week.

Example of bonus covering several weekly pay periods:

A customer service representative earns a performance bonus for the month of February. The month of February had 4 weeks, and the customer service assistant worked the following hours 40, 42, 40, and 43. The employee receives a performance bonus of $200.

To find the additional amount required for overtime, you would take the total amount of the bonus ($200) and divide by total hours worked (165 hours) to get the bonus hourly rate of $1.21/hour. According to the regulation, you would then multiply .5 (one half) by the bonus hourly rate ($1.21) by the number of overtime hours (5) to have an additional payment due of $3.03 (.5 x $1.21 x 5).

Method of Processing and Payment

- The Payroll Department is requesting the use of the *Authorization Form for Recurring Payments or Additional Payments for Department Use* to be utilized. The onetime payment can be processed by the department and kept in the department's records. An example of how the form should be completed can be found on the NU Values website.

- The Strategic Staffing and Compensation division is available to review individual plans for identification of the type of plan as well as guidance on calculating payments. For further information, we invite you to view the regulations which can be referenced on the Department of Labor website at http://www.dol.gov/dol/allcfr/Title_29/Part_778/Subpart_C.htm.

Nondiscretionary Payments to Nonexempt employees

All additional compensation requests in lieu of an employee's base pay are to be submitted to the

	Strategic Staffing and Compensation Division for review – this includes payments such as 1404 – Overload, 1401 – Additional Compensation, 0604 – Consulting, and 0605 – Honorarium. This requirement excludes the Outstanding Performance Stipend and other established nondiscretionary plans. The Strategic Staffing and Compensation division is available to review individual plans for identification of the type of plan, as well as guidance on calculating payments.
Nonexempt Travel Time Guidelines	
	For the UNMC campus, a change has been made to the *UNMC Nonexempt Travel Time Guidelines* related to *Accounting for Working Travel Time* section, paragraph 3b. For Ground/Away trips, a passenger will be able to account for hours in transit (not coinciding with their regular working hours) as **Working Travel Time.** This UNMC provision of the guideline is more generous than the regulation requirements, where a passenger would not have this time considered as **Working Travel Time**. (nuvalues.unmc.edu – FLSA section)
Overtime Pay Premium Requirement (or Compensatory Time Off)	
	All nonexempt staff who are paid on an hourly basis are eligible for overtime pay premium or compensatory time off at a rate of one and one half times the hourly rate, for all hours worked over 40 in one week (or, if the job is on an approved 8/80 schedule, for all hours worked over 8 in a defined workday or in excess of 80 hours during a defined two-week work week pay period, whichever is greater). This means, as an employer, we are required to compensate employees for hours worked in excess of 40 in a workweek (or, in accordance with an approved 8/80 schedule).
Salary Test: Annual Earnings at UNMC below $23,660	
	Employees whose annual earnings at the University of Nebraska Medical Center are below $23,660, regardless of full time equivalency, will automatically be designated as nonexempt. These employees must be paid overtime or compensatory time for any hours worked in excess of 40 hours in a work week or in accordance with an approved 8/80 schedule, as well as track daily time records. Questions and comments regarding this FLSA compliance communication can be directed to Human Resources Compensation: Alice Weyant 95913 aweyant@unmc.edu

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