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## **Policy 1303**

### **Provisions for Granting Overtime & Compensatory Leave**

**Date of Current Revision: April 2008**

**Responsible Office: Director, Human Resources**

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#### **1. PURPOSE**

This policy establishes an overtime and compensatory leave policy at James Madison University as provided by the Fair Labor Standards Act (FLSA).

#### **2. AUTHORITY**

The Fair Labor Standards Act, [29 USC 201, et seq.](#), directs, among other things, that employees be paid at a rate of time and a half for every hour worked in excess of 40 hours in one workweek. This is the case unless an employee is considered 'exempt' from the Act's overtime provisions.

#### **3. DEFINITIONS**

##### **Fair Labor Standards Act:**

The Fair Labor Standards Act (FLSA) establishes overtime pay affecting full-time and part-time workers. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek.

##### **Non-Exempt Employee:**

An employee who is not exempt from the overtime provisions of the FLSA and therefore must be paid at a rate of one and one-half times her/his regular rate of pay for hours worked in excess of 40 in a workweek.

##### **Exempt Employee:**

An employee who is exempt from the overtime provisions of the FLSA and, therefore, is not eligible to be paid overtime by the university. Such positions are normally, in supervisory, management, administrative positions or specialized positions such as faculty members and information technology and must meet the specific criteria for exemption established by the FLSA. Certain exempt employees may, under certain circumstances, qualify for extra pay for additional work performed. However, this is rare. Please see the Human Resources office for details.

#### **4. APPLICABILITY**

This policy applies to all employees of the university. Overtime provisions apply only to non-exempt employees.

#### **5. POLICY**

All employees of James Madison University are covered by the FLSA, although some employees are exempt from its overtime provisions depending upon the type of positions the employees occupy. For purposes of FLSA, each position must be designated exempt or non-exempt. Exempt employees will not receive overtime pay regardless of the number of hours worked. They are also exempt from receiving compensatory leave except for hours worked on a scheduled holiday or inclement weather day.

All positions in pay bands 1 and 2 will receive a non-exempt status. The status of positions in pay bands 3 and 4 are determined by the duties and responsibilities of the position. Positions in pay bands 5 and higher are generally exempt positions. Hiring supervisors will inform employees of their exempt/non-exempt status.

Administrative staff, department heads, and supervisors are required to approve overtime before any non-exempt employee performs the work in excess of 40 hours per week. Authorization will be granted only to cover emergencies and to provide for staff coverage during peak workloads.

Departments have the option of choosing to offer Overtime Leave in lieu of cash compensation (see section 6.5 below). However, this choice is strictly at the department's discretion.

## **6. PROCEDURES**

6.1 The FLSA requires that hours worked in excess of 40 in a regular workweek, by non-exempt employees, must be compensated at one and one-half times the regular rate of pay. The regular workweek extends from midnight Saturday until midnight the following Saturday, except for those employees whose workweek is designated differently. Non-exempt employees will be granted compensatory leave that is hour for hour compensation for time worked beyond the required hours in a workweek in which no more than 40 hours are actually worked. This may happen when a holiday or inclement weather day has occurred or when an employee has taken annual, sick, or compensatory leave.

6.2 For classified non-exempt employees, department heads/supervisors should submit a properly authorized Record of Overtime to Payroll Services.

6.3 For wage (i.e., part-time and student) employees, overtime hours should be properly reported to Payroll Services on the JMU Time Entry panels. Care should be taken to not report overtime hours as regular hours. When determining overtime, ALL hours worked *for the University* are calculated.

6.4 The FLSA requires all records must be kept at least three years even if audited prior to that time. A weekly time sheet must be maintained for each non-exempt employee. The time sheet must also indicate a daily record of all paid and non-paid leave used. The paid leave includes annual leave, sick leave, holidays, workers' compensation, civil leave, inclement weather days, and military leave. The unpaid leave would include leave without pay and suspension. In addition, the employee and supervisor's signature must be on the time sheet.

6.5 As an alternative to cash payments for overtime hours worked, a department head/supervisor may choose to give their non-exempt employees the option of receiving Overtime Leave instead of cash payments for hours worked in excess of 40 during the regular work week. When choosing to use this option, the supervisor should discuss the option with the employee who is expected to incur overtime hours. The employee may then choose either to receive cash payment for overtime hours worked or Overtime Leave as compensation. If the employee chooses cash payment, the current procedure of reporting the hours directly to the Payroll Office applies. However, if the employee chooses the Overtime Leave option, his or her supervisor will complete a special Overtime Leave Form for the overtime hours worked, sign the form and submit it to Human Resources. The form should include the information used by the supervisor to calculate the Overtime Leave hours earned (essentially, 1.5 times the number of hours actually worked in excess of 40 in the Sunday through Saturday work week.).

The following stipulations and limitations apply to this Overtime Leave provision:

- All overtime must always be authorized in advance by the supervisor.
- The decision regarding whether to offer this option to an employee is at the discretion and initiation department and/or supervisor.

- Once a department offers the Overtime Leave option to one employee, it must offer the option to all qualified employees in the department.
- This option is available only to full-time non-exempt classified employees. Wage employees never qualify for paid leave and must be paid cash for any and all overtime hours worked.
- This option does not apply to exempt employees.
- If an employee chooses the Overtime Leave option, that choice will be confirmed in writing by the supervisor in a memo to the employee with the policy attached.
- Once an employee chooses the overtime leave option, he or she will be paid in leave for the next 40 consecutive overtime hours worked, thereby accumulating the maximum limit of 60 Overtime Leave hours. Once the employee accumulates the maximum amount of hours, he or she must revert to cash payments for overtime hours. The supervisor is responsible for making certain that the employee does not exceed the maximum of 60 hours of Overtime Leave. No employee may accumulate more than 60 hours of Overtime Leave. When an employee reaches the maximum amount of 60 hours of Overtime Leave, all future overtime hours will be compensated in cash.
- An employee who leaves the university with overtime leave accumulated will be reimbursed for that leave at the hourly rate being earned at the time of departure from the university OR the employee's average hourly pay rate over the last 3 continuous years of employment, whichever is higher.
- An employee who accumulates Overtime Leave and who subsequently is transferred, promoted, or demoted to another non-exempt classified position at JMU will retain the Overtime Leave accrued.
- An employee who accumulates Overtime Leave and who subsequently is transferred, promoted, or demoted to an exempt position at JMU will be compensated for that leave at the hourly rate being earned at the time of leaving the non-exempt position OR the employee's average hourly pay rate over the last 3 continuous years of employment, whichever is higher.
- Overtime leave may not be used in leave sharing.

## **7. RESPONSIBILITIES**

Hiring supervisors must inform all new employees of their status as exempt or non-exempt. Human Resources is available to assist with this function.

It is the responsibility of the supervisors to ensure that leave records are maintained on all non-exempt employees and all hours of leave used are correctly reported to Human Resources. Questions related to the application of this policy should be directed to your supervisor or Human Resources.

Supervisors in departments choosing to use the Overtime Leave option are responsible for completing the Overtime Leave form and ensuring that no employee accumulates more than 60 hours of Overtime Leave.

## **8. SANCTIONS**

The FLSA is a federal law. Therefore, those who violate its provisions are subject to the most stringent punitive action.

In addition, sanctions will be commensurate with the severity and/or frequency of the offense and may include termination.

## **9. EXCLUSIONS**

Employees whose positions are classified as 'exempt' are not eligible to receive overtime pay or overtime leave.

## **10. INTERPRETATION**

The authority to interpret this policy rests with the President, and is generally delegated to the Director of Human Resources.

Previous version: May, 2006

Approved by the President: January, 2004

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