

U.S. OFFICE OF PERSONNEL MANAGEMENT

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Handbook on Alternative Work Schedules

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a. Basic Work Requirement

The basic work requirement of a flexible work schedule is the number of hours, excluding overtime hours, an employee must work or otherwise account for by leave, credit hours, holiday hours, excused absence, compensatory time off, or time off as an award.

(1) A full-time employee must work 80 hours/biweekly pay period, or a multiple of this requirement, as determined by the agency head. Agencies may also establish daily or weekly basic work requirements.

(2) A part-time employee works fewer hours than a full-time employee within a specified period of time, as determined by the agency head consistent with 5 U.S.C. 3401 through 3408 and 5 CFR part 340.

b. Tour of Duty

(1) In general, the tour of duty comprises all hours and days for which flexible and core hours have been designated, including those days within a maxiflex schedule for which only flexible hours are scheduled. (See Appendix B.) The tour of duty defines the limits within which an employee must complete his or her basic work requirement.

Note: Overtime hours are not included in the definition of a tour of duty for employees under AWS.

(2) The types of FWS vary significantly. Agencies have the authority to establish flexible and core hours to meet their needs. Agencies are encouraged to delegate this authority to the lowest practicable organizational levels. (Appendix B suggests some possible AWS)

Models of
Compressed
Work Schedules

• APPENDIX D.
Flexifinder

schedules. These models are not all-inclusive; they illustrate alternatives that agencies may adapt to fit their specific needs.)

(3) Temporary changes in the tour of duty may be made under the terms of a negotiated agreement, if applicable, or agency policy.

c. Credit Hours

(1) Credit hours may be worked only by employees covered by FWS programs. If the agency's FWS plan permits credit hours, the agency may approve an employee's request to work credit hours to be applied to another workday, workweek, or biweekly pay period. Not all FWS programs provide for credit hours.

(2) Credit hours are worked at the election of the employee consistent with agency policies; they are distinguished from overtime hours in that they *are not officially ordered and approved in advance* by management. Credit hours must be worked *within* an employee's non-overtime tour of duty (see subsection b(1) above) .

(3) An employee's right to use earned credit hours is governed by policies established under an agency FWS program. See 5 U.S.C. 6122 (a) .

(4) When an employee uses credit hours, such hours are to be counted as a part of the basic work requirement to which they are applied. An employee is entitled to his or her rate of basic pay for credit hours, and credit hours may not be used by an employee to create or increase entitlement to overtime pay.

(5) An agency may place a limit on the number of credit hours an employee may earn during a biweekly pay period. An agency also may limit the number of credit hours an employee may earn on a daily or weekly basis. Further, a time frame may be set within which employees may use credit hours after they have been earned. Section 6126(a) of title 5, United States Code, limits the number of credit hours an employee may carry over from a biweekly pay period to a succeeding biweekly pay period to 24 hours for a full-time employee (one-fourth of a part-time employee's biweekly work requirement). An agency may further limit the number of credit hours carried forward from one biweekly pay period to the next.

(6) When an employee is no longer subject to an FWS program, the employee must be paid for accumulated credit hours at his or her *current* rate of pay. Payment for accumulated credit hours is limited to a maximum of 24 hours for a full-time employee. For a part-time employee, the limit is one-quarter of the employee's biweekly work requirement. (See 5 U.S.C. 6126(b).) An employee may not be compensated for credit hours for any other reason (e.g., excess,

unused credit hours that cannot be carried forward into the next pay period). (See 5 U.S.C. 6123(b).)

(7) An employee may not be paid overtime pay, Sunday premium pay, or holiday premium pay for credit hours. Credit hours must always be part of the employee's non-overtime basic work requirement. Sunday premium pay may be paid only when an employee works on Sunday, with the exception of paid leave and excused absence, and then only when permitted by law. Holiday premium pay may be paid only for work on a holiday. See 5 U.S.C. 6121(3) and 5 U.S.C. 5546(a) and (b).

(8) Whether an employee is entitled to night pay for credit hours on the day on which such hours are earned (worked) depends on the rules for night pay. (See 5 U.S.C. 6123(c) and section f. below.)

Note: Credit hours must be considered daytime hours whenever possible.

(9) In the event of an agency closure or early dismissal before the beginning of an employee's daily tour of duty, an employee may retain credit hours that have not been used, to the extent permitted by law and regulation (e.g., full-time employees may not carry over more than 24 credit hours to a new biweekly pay period). If an early dismissal occurs during or after the employee's daily tour of duty, the employee will be charged for credit hours that have already been used.

(10) Agencies may permit Senior Executive Service (SES) members to participate in FWS programs; however, SES members may not accumulate credit hours. (See 5 CFR 610.408.)

Note: See "Travel" for information about credit hours and travel.

d. Overtime Work Determinations

(1) For employees under FWS programs, overtime hours are all hours of work in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance by management. (See the definition of "overtime hours" at 5 U.S.C. 6121(6). The requirement that overtime hours be officially ordered in advance also applies to nonexempt employees under the Fair Labor Standards Act (FLSA). Employees on flexible work schedules may not earn overtime pay as a result of including "suffered or permitted" hours (under the FLSA) as hours of work. See 5 CFR 551.401(a)(2).

(2) Management may order an employee who is covered by an FWS program to work hours that are in excess of the number of hours the employee planned to work on a specific day. If the hours ordered to be worked are not in excess of 8 hours in a day or 40 hours in a week at the time they are performed, the agency, at its discretion, may permit

or require the employee to--

(i) take time off from work on a subsequent workday for a period of time equal to the number of extra hours of work ordered;

(ii) complete his or her basic work requirement as scheduled and count the extra hours of work ordered as credit hours; or

(iii) complete his or her basic work requirement as scheduled if the agency policy permits. This will result in an employee entitlement to be compensated at the rate of basic pay for any hours of work equal to or less than 8 hours in a day or 40 hours in a week. An employee also would be entitled to overtime pay for hours of work ordered in excess of 8 hours in a day or 40 hours in a week.

e. Compensatory Time Off

(1) "Compensatory time off" is time off on an hour-for-hour basis in lieu of overtime pay. For employees under FWS, the overtime hours of work may be regularly scheduled or irregular or occasional. An agency may grant compensatory time off in lieu of overtime pay at the request of the employee (including prevailing rate employees and nonexempt employees) under a flexible work schedule. (See 5 U.S.C. 6123(a).)

(2) Compensatory time off, in lieu of overtime pay, may not be required for--

(i) any prevailing rate employee;

(ii) any employee who is nonexempt from the FLSA; or

(iii) any FLSA-exempt employee whose rate of basic pay is equal to or less than the rate for GS-10, step 10.

(3) Mandatory compensatory time off, in lieu of overtime pay for irregular or occasional overtime work, may be ordered for employees who are FLSA exempt and whose rate of basic pay exceeds the rate for GS-10, step 10. However, this does not apply to prevailing rate employees who are FLSA exempt. The rate of basic pay for GS-10, step 10, includes any applicable special rate of pay for law enforcement officers or special pay adjustment for law enforcement officers under section 403 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), respectively; an applicable locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law).

f. Night Pay (General Schedule and Other Employees Covered by Section 5545(a) of Title 5, United States Code)

(1) If an employee's tour of duty includes 8 or more hours available for work during daytime hours (i.e., between 6 a.m. and 6 p.m.), he or she is not entitled to night pay even though he or she voluntarily elects to work during hours for which night pay is normally required (i.e., between 6 p.m. and 6 a.m.).

(2) Agencies must pay night pay for those hours that must be worked between 6 p.m. and 6 a.m. to complete an 8-hour daily tour of duty.

(3) An employee is entitled to night pay for any nonovertime work performed between 6 p.m. and 6 a.m. during designated core hours.

Note: An employee who performs regularly scheduled overtime work at night is also entitled to night pay.

g. Night Differential (Prevailing Rate Employees)

Night differential will not be paid solely because a prevailing rate employee elects to work credit hours, or elects a time of arrival or departure at a time of day when night differential is otherwise authorized, except that prevailing rate employees are entitled to night differential for regularly scheduled nonovertime work when a majority of the hours of a FWS schedule for a daily tour of duty occur during the night. (See 5 U.S.C. 5343(f) and 6123(c)(2).)

h. Holiday Pay (When No Work Is Performed)

(1) Under an FWS program, a full-time employee who is relieved or prevented from working on a day designated as a holiday (or an "in lieu of" holiday under 5 U.S.C. 6103(b) or section 3 of E.O. 11582) by Federal statute or Executive order is entitled to his or her rate of basic pay on that day for 8 hours. (See 5 U.S.C. 6124.)

(2) If a holiday falls on a day during a part-time FWS employee's tour of duty and the employee is relieved or prevented from working on that day, the employee is entitled to his or her rate of basic pay for the typical, average, or scheduled number of hours of work for that day toward his or her basic work requirement (not to exceed 8 hours). If a part-time FWS employee has maintained a reasonably consistent schedule for several pay periods, the employee may be paid for the number of hours he or she would have worked had the holiday not relieved or prevented the employee from working (not to exceed 8 hours). If a part-time employee has no typical schedule, the agency may average the number of hours worked in prior weeks on days corresponding to the holiday to determine an employee's pay entitlement for that holiday (not to exceed 8 hours). (See 5 CFR 610.405.)

A work schedule submitted in advance of the administrative work

week also may be used by an agency as the basis for determining the number of hours to pay a part-time employee on a holiday. However, agencies should ensure that there is no abuse of entitlement. For example, an employee should not schedule more hours of work on a holiday than he or she has scheduled in prior weeks on days corresponding to the holiday.

(3) Determining "In Lieu of" Holidays when Holidays Fall on Nonworkdays

(i) Nonworkdays Other than Sunday. If a holiday falls on a nonworkday of the employee--except for holidays falling on a Sunday nonworkday--the employee's preceding workday will be the designated "in lieu of" holiday. (See 5 U.S.C. 6103(b).)

(ii) Sunday Nonworkday. If the holiday falls on the Sunday nonworkday of an employee, the subsequent workday will be the employee's designated "in lieu of" holiday. (See section 3 of Executive Order 11582 of February 11, 1971.)

(iii) Part-time employees. Part-time employees are not entitled to an "in lieu of" holiday when a holiday falls on a nonworkday for the employee. (See 5 CFR 610.405.)

i. Pay for Holiday Work

(1) A full-time employee under an FWS program who performs non-overtime work on a holiday (or a day designated as the "in lieu of" holiday under 5 U.S.C. 6103(b) or section 3 of E.O. 11582) is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay for that holiday work. Holiday premium pay is limited to a maximum of 8 hours.

Note: Agencies must designate the 8 holiday hours applicable to each FWS employee. The 8 hours designated as holiday hours must include all applicable core hours .

(2) An employee under an FWS program who works during non-overtime and non-holiday hours that are part of the employee's basic work requirement on a holiday is paid his or her rate of basic pay for those hours of work.

Example: An employee who works 10 hours on a holiday (including 1 hour of overtime work ordered by a supervisor) and who has a 9-hour basic work requirement on that day would earn holiday premium pay for the 8 holiday hours designated by the agency, his or her rate of basic pay for 1 hour (within the basic work requirement), and 1 hour of overtime pay.

(3) A part-time employee under an FWS program is entitled to holiday premium pay only for work performed during his or her basic work requirement on a holiday (not to exceed 8 hours). A part-time employee, scheduled to work on a day designated as an "in lieu of" holiday for full-time employees under 5 U.S.C. 6103(b) or section 3 of E.O. 11582, is not entitled to holiday premium pay for work performed on that day. (See 5 CFR 610.405.)

j. Pay for Sunday Work

(1) A full-time employee who performs regularly scheduled nonovertime work, a part of which is performed on Sunday, is entitled to Sunday premium pay for the entire daily tour of duty, not to exceed 8 hours. It is possible for an employee to have two daily tours of duty that begin or end on the same Sunday.

(2) A full-time employee is entitled to Sunday premium pay for the entire daily tour of duty, up to 8 hours, based upon electing to work any flexible hours on a Sunday. However, an agency may preclude employees from working flexible hours on a Sunday. See Comptroller General opinion B-245772, May 7, 1992; 5 CFR 610.111(d); and section c.(7) above.

(3) A part-time employee is not entitled to Sunday premium pay. (See 5 U.S.C 5546(a) and 46 Comptroller General 337 (1966).)

k. Paid Time Off

(1) Paid time off during an employee's basic work requirement must be charged to the appropriate leave category, credit hours, compensatory time off, or to excused absence if warranted.

(2) There is no requirement that employees use flexible hours for medical or dental appointments or other personal matters if the employee wishes to charge this time to leave. To the extent permitted by the agency, an employee may choose to charge time off during flexible hours to an appropriate leave category or use credit hours when time off is scheduled during flexible hours in order to preserve leave.

(3) An employee may apply no more sick or annual leave to a given day than he or she is scheduled to work on that day. In organizations in which employees are not required to schedule their daily work hours in advance, agencies should develop policies to ensure that sick leave is not abused.

l. Excused Absence

(1) The head of an agency may grant excused absence with pay to

employees covered by an FWS program under the same circumstances as excused absence would be granted to employees covered by other work schedules. For employees on a flexible work schedule, the amount of excused absence to be granted should be based on the employee's established basic work requirement in effect for the period covered by the excused absence.

(2) If an agency determines that excused absence should be granted to employees based upon individual patterns of arrival and departure, the following methods for discerning these patterns may be used:

(i) Constant Pattern of Arrival. The majority of employees tend to arrive within 5 to 10 minutes of the same time each day. Once a pattern has been established, it should be used as a reference point.

(ii) Predominant Pattern of Arrival. If an employee maintains a schedule in which one particular arrival time predominates, this arrival time should be used to determine the amount of excused absence to be granted.

(iii) Variable Pattern of Arrival. Where there is such variation in an employee's arrival time that there is no discernible pattern, the mathematical average of the employee's arrival time for the previous 2-week period may be computed and the average arrival time used as a reference for determining excused absence.

(3) When employees who would otherwise be required to report to work are excused from work because of an office closure due to a weather emergency or furlough, other employees who do not have a scheduled workday(s) during the office closure or furlough may not be granted another nonworkday. In Comptroller General opinion B-217080 (June 3, 1985), the Comptroller General determined that employees taking a day off under a flexible work schedule are in a non-pay status on those days. Therefore, if the agency is closed because of weather conditions, the employees have no entitlement to an additional day off.

m. Temporary Duty

When an employee covered by an FWS program is assigned to a temporary duty station using another schedule--either traditional or AWS--the agency may allow the employee to continue to use the schedule used at his or her permanent work site (if suitable) or require the employee to change the schedule to conform to operations at the temporary work site.

n. Travel

(1) When an Fair Labor Standards Act (FLSA)-exempt or nonexempt

employee under an FWS program is in a travel status during the hours of his or her regularly scheduled administrative workweek, including regularly scheduled overtime hours, that time is considered to be hours of work and must be used for the purpose of overtime pay calculations, as applicable. See the definitions of "regularly scheduled administrative workweek" and "regularly scheduled" in 5 CFR 610.102. Note, however, that overtime hours are initially scheduled for work, not travel.

(2) Because time spent in a travel status outside regularly scheduled hours is not compensable in many cases (see paragraph (3), below), agencies must determine what constitutes regularly scheduled work for employees covered by an FWS program when they travel. Agencies must also determine the number of corresponding hours for an employee on a nonworkday under the FLSA overtime provisions in 5 CFR 551.422(a)(4). For both purposes, agencies may apply the guidance outlined under "Excused Absence," above. Also, see 5 CFR 610.111(d).

(3) For FLSA-exempt employees under flexible work schedules, hours of work for time spent in a travel status outside the regularly scheduled administrative workweek and away from the official duty station are determined in accordance with 5 CFR 550.112(g) or 5 U.S.C. 5544 (for prevailing rate employees). For nonexempt employees, the total number of hours of work for travel outside the regularly scheduled administrative workweek and away from the official duty station is determined by applying both 5 CFR 550.112(g) or 5 U.S.C. 5544 and 5 CFR 551.422. (See 5 CFR 551.401(h).)

(4) An agency may require an employee to follow a traditional fixed schedule (8 hours a day, 40 hours a week) during pay periods he or she travels.

(5) An employee may not earn credit hours for travel because travel in connection with Government work is not voluntary in nature. In other words, travel itself does not meet the definition of credit hours in 5 U.S.C. 6121(4), which provides that credit hours are hours within a flexible work schedule in excess of the employee's basic work requirement which the employee elects to work so as to vary the length of a workweek or a workday. If travel time creates overtime hours of work (see the previous paragraphs of this section, above) the employee must be compensated by payment of overtime pay or under the rules for granting or requiring compensatory time off.

o. Application of Flexible Work Schedules in Unorganized Units

Agencies may unilaterally install FWS programs in unorganized units. There is no requirement for a vote by affected employees.

p. Appeals to the Office of the Special Counsel (OSC)

(1) Within the guidelines established by the agency's FWS program, section 6132 of title 5, United States Code, protects an employee's right to elect a time of arrival or departure, to work or not to work credit hours, and/or to request or not to request compensatory time off in lieu of payment for overtime hours under an FWS program.

(2) Employees may contact the Office of Special Counsel (OSC) and file a complaint with that agency regarding allegations of coercion prohibited by 5 U.S.C. 6132. Violations of 5 U.S.C. 6132 are subject to investigation by the Office of Special Counsel as provided in 5 CFR part 1810.

Negotiating Flexible and Compressed Work Schedules |
Compensation Administration

This page can be found on the web at the following url: <http://www.opm.gov/oca/aws/html/flex.asp>

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