



Compensation for Hours Worked

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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The FLSA does not limit the number of hours that an employee may work, either daily or weekly. It simply requires that overtime pay must be paid at a rate of not less than one and one-half (1½) times the non-exempt employee's regular rate of pay for each hour worked in a work week in excess of the maximum hours applicable to the type of employment in which the non-exempt worker is engaged. This usually means overtime for hours in excess of 40 hour per week. Of course, overtime payments need not be made to exempt or non-covered workers. Only non-exempt employees are entitled to overtime under the act.

"The FLSA's workweek for nonexempt employees is generally a fixed period of 168 hours — seven consecutive 24-hour periods" which is established by the employer for each employee. 29 C.F.R. § 778.105. It may begin on any day of the week and at any hour of the day; it need not coincide with the calendar week. "The FLSA also provides for the declaration of a longer work period for law enforcement and fire protection personnel." 29 C.F.R. § 553.224(a). For the purpose of FLSA compliance, "work period" and "workweek" are identical, with the exception being for public safety.

In computing hours worked, "the FLSA requires that each workweek stand alone." 29 C.F.R. § 778.104. **It does not permit the averaging of hours over two or more weeks, with the exception of police, firefighters**, and certain hospital and nursing home employees. This is true regardless of whether an employee works on a standard or swing-shift schedule and regardless of whether he or she is paid daily, weekly, bi-monthly, or on another basis.

While overtime must be calculated on a work week basis, there is no requirement in the FLSA that overtime compensation must be paid weekly. According to the DOL regulations, as a general rule, "overtime earned in a particular workweek should be paid where possible on the regular payday for the period in which such workweek ends." However, when the correct amount of overtime compensation cannot be determined until later, it is permissible to wait if it is paid as soon after the regular pay period as is practical. Payment should not be delayed beyond the next payday. 29 C.F.R. § 778.106.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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