

Executive Leave, Pay and Leave Practices for Exempt Executive, Administrative and Professional Employees as Defined by the Fair Labor Standards Act and the Washington Minimum Wage Act

Policy Number: 2021-0010
 Issue Date: 07-14-2022
 Replaces: PER 8-1-2 (AEP)

PURPOSE

To provide executive leave and set forth pay and leave practices to be followed for employees employed in a bona fide executive, administrative, or professional capacity. These employees are exempt from overtime pay under the federal Fair Labor Standards Act (FLSA) and the Washington Minimum Wage Act (WMWA). Executive, administrative, or professional employees who are covered by a collective bargaining agreement will be compensated in the manner set forth therein, provided that the terms of the contract are not less beneficial to the employee than the minimum requirements of the FLSA and the WMWA.

POLICY APPLICABILITY

This policy applies to all employees in the executive branch departments, offices, divisions and agencies, including the Assessor's Office and King County Elections. This includes all career service, provisional, temporary, probationary, and appointed employees.

DEFINITIONS

"Human Resources Manager" means a person who is responsible for the human resources management practices in executive agencies.

"FLSA-exempt Employee" for the purposes of these policies and procedures, means an individual designated by the Director of the Department of Human Resources (DHR), or designee, as being employed in a bona fide executive, administrative, or professional capacity, as defined by the FLSA and the WMWA, and who is therefore exempt from the overtime pay and minimum wage requirements of the FLSA and the WMWA.

"Part-time FLSA-exempt Employee" means an FLSA-exempt employee whose workload expectations and pay are established relative to, and less than, a full-time position.

"Bona Fide Executive, Administrative, or Professional Capacity" means employed in a position determined by the DHR Director, or designee, to satisfy the applicable "salary basis" test and the "duties" test of the FLSA and the WMWA.

"Salary Basis" means the employee regularly receives each pay period a predetermined amount constituting all or part of their compensation which is not subject to reduction because of variations in the quality or quantity of the work performed, except as otherwise provided by the FLSA and the WMWA.

- The salary basis test does not apply to an employee who is the holder of a valid license or certificate permitting the practice of law, medicine, or dentistry and who is actually engaged in the practice thereof.
- In the first and final week of employment, an employee's salary may be prorated for actual days worked in the first and last week of employment.
- An FLSA-exempt employee need not be paid for any workweek in which they perform no work.

"Hourly Basis" means the employee is entitled to be paid for all actual hours that they are required or permitted to work at either the straight time regular hourly rate until the employee has worked

forty (40) hours in the workweek or overtime hourly rate at one and one-half time the employee's regular rate of pay for each hour worked over forty (40) in the workweek. If the employee is represented, the terms of the applicable collective bargaining agreement will govern; provided that the collective bargaining agreement is not less beneficial to the employee than the minimum requirements of the FLSA and the WMWA. All Short-Term Temporary (STT) employees are paid on an hourly basis regardless of the FLSA classification of the position to which they are assigned. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement.

"Executive Branch" means that section of government under the authority of the county executive as defined by Section 310 of the King County Charter.

"Executive Leave" means time off with pay in full day increments granted each calendar year at the discretion of the department director or county executive to FLSA- exempt employees whose duties require the employee to work substantially in excess of the standard work schedule on an ongoing, regular basis.

"Retaliation" means to take adverse employment action against an individual because they have engaged in statutorily protected activity.

"Workweek" is a fixed and regularly recurring period of 168 hours during seven consecutive twenty-four-hour periods. Unless otherwise designated in writing by the department director or designee, the workweek for an employee paid on the MSA payroll system begins at 12:00 a.m. on Sunday and continues for the next 168 hours through Saturday and the workweek for an employee paid on the PeopleSoft payroll system begins at 12:00 a.m. on Saturday and continues for the next 168 hours through Friday. The workweek for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement.

POLICY

FLSA-exempt employees may be required to work a specified schedule set by their appointing authority and, in all cases, are expected to work the hours necessary to satisfactorily perform their jobs.

FLSA-exempt employees are required to work the hours needed to satisfactorily perform their duties, and will receive their normal rate of pay for the workweek regardless of whether or not they work on a holiday, and regardless of whether they are on a standard or alternative work schedule.

FLSA-exempt employees are compensated on a salary basis generally based on a 40-hour work schedule. The salary basis test does not apply to an employee who is the holder of a valid license or certificate permitting the practice of law, medicine, or dentistry and who is actually engaged in the practice thereof.

Part-time FLSA-exempt positions may be established in only one of the following part-time designations:

- 0.5 FTE (or a general schedule of 20 hours per workweek)
- 0.6 FTE (or a general schedule of 24 hours per work week)
- 0.75 FTE (or a general schedule of 30 hours per workweek)
- 0.8 FTE (or a general schedule of 32 hours per workweek)
- 0.9 FTE (or a general schedule of 36 hours per workweek)

Part-time FLSA-exempt positions are compensated on a salary basis based on their part-time designation and are not eligible for additional pay for hours worked in excess of their general work schedule

All positions designated as part-time FLSA-exempt must be evaluated by the appointing authority at least annually to ensure that the part-time designation continues to be appropriate.

The accrued leave balances of an FLSA-exempt employee are not charged when the employee is absent for part of a workday nor is the employee's pay reduced.

FLSA-exempt employees who are absent for part of a day are on "leave with pay" status. FLSA-exempt employees must notify and request authorization from their supervisors in advance to be absent for part of the workday. The notification and request shall be made in a manner as determined by the department. Departments may require partial-day absence notification, requests and approvals in written form.

FLSA-exempt employees must submit and have approved by their supervisor a written request (on designated forms or by another documented manner as determined by the department) to use any applicable leave (sick, vacation, bereavement, Executive, leave without pay, etc.) when absent from work for one or more full days.

An FLSA-exempt employee who is absent for a full day because of vacation or illness (including School Leave that is charged against sick leave) will have their accrual balances charged for the number of hours that the employee was generally scheduled to work. For example, an FLSA-exempt employee with a general work schedule of five 8-hour days who takes three days of vacation would be charged 24 hours (3 days x 8 hours = 24 hours). If the employee has a general work schedule of four 10-hour days and takes three days of vacation, the amount charged would be 30 hours (3 days x 10 hours = 30 hours). An FLSA-exempt employee may take and be charged for vacation or sick leave in full day increments only. If the vacation or sick leave balance is not sufficient to cover the full day absence, then the employee may not take or be charged vacation or sick leave for any portion of the day and the day would be taken as unpaid leave.

Use of leave by an FLSA-exempt employee for full day absences that are not vacation or sick leave will be made in full day increments, regardless of generally scheduled work hours, resulting in no reduction of salary, sick leave balance or vacation leave balance. Such absences include Bereavement Leave, Jury Duty, Military Leave, Executive Leave, Holiday Pay, Organ Donor Leave, Administrative Leave, and any other paid time off that is not vacation or sick leave¹. For example, an FLSA-exempt employee with a general work schedule of five 8-hour days who takes two days of Holiday Leave over the Thanksgiving holiday will receive 16 hours (2 days x 8 hours = 16 hours) of holiday leave. An employee with an alternative schedule of four 10-hour days who takes two days of Holiday Leave over the Thanksgiving holiday will receive 20 hours (2 days x 10 hours = 20 hours) of holiday leave.

Indigenous Peoples' Day. All holiday eligible executive branch FLSA-exempt employees who are required to work on the Indigenous Peoples' Day holiday because of the state court schedule will have additional hours of vacation leave added to their vacation leave bank. These employees will receive additional vacation hours corresponding to their normal work schedule. Full-time employees with a 40-hour work schedule will receive 8 hours of vacation pay. Full-time employees with a 35-hour work schedule will receive 7 hours of vacation pay. Part-time employees will receive pro-rated hours (e.g., an employee with a 20 hour a week work schedule, who normally works 4 hours a day, will receive 4 hours of vacation pay.)

Deductions may not be made from an FLSA-exempt employee's salary for absences occasioned by jury duty, attendance as a witness (e.g., deductions may not be made where an employee is under legal compulsion to be present in court but deductions may be made for voluntary attendance in a court case in which the employee is a party) or temporary military leave. The employee is required to report earnings for jury duty or witness fees to their department director in accordance with King County Code 3.12.240.

An FLSA-exempt employee may not be suspended without pay for less than one full workweek or multiples thereof unless the discipline is imposed for infractions of safety rules of major significance that are intended to prevent serious danger to the workplace or other employees.

¹ This provision supersedes corresponding sections in HR Policy 2021-0005, Alternative Work Schedules, dated 1/12/21

Suspensions without pay imposed for violations of safety rules of major significance may be of any length. All suspensions require the prior approval of the DHR Director, or designee.

Deductions from the salary of an FLSA-exempt employee cannot be made for absences occasioned by the employer or by the operating requirements of the business unless no work is performed in the workweek. If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available. For example, if an FLSA-exempt employee's work unit is closed down in the middle of the workweek due to inclement weather and the employee is unable to perform work for the rest of that week, the employee will be paid their salary for that entire week. If work is not available but the employee has previously requested and has been approved for time off (e.g., vacation, sick leave, executive leave, leave of absence), the employee will have hours deducted from their accruals as approved in accordance with established policies for leave use. If the closure extends beyond that workweek, the FLSA-exempt employee need not be paid for future workweeks in which no work is performed.

FLSA-exempt employees are not eligible for overtime pay or compensatory time.

The DHR Director, or designee, may approve a written request from a department director that an FLSA-exempt employee be compensated on an hourly basis when it would be in the best interests of the county, which may include a period of time that an employee requires an intermittent schedule for medical reasons in order to ensure accurate accounting of absences for Family Medical Leave Act (FMLA) or King County Family Medical Leave (KCFML) benefits. If approved, the employee is treated as an hourly employee and all absences are charged against pay or the appropriate leave category. Additionally, the employee is not eligible to be awarded or use executive leave.

Executive Leave

All directors of executive departments/offices will be granted up to ten (10) days of executive leave each calendar year. An additional amount of up to twenty (20) days of executive leave may be granted to directors of executive departments/offices in each calendar year for critical recruitment and retention purposes as specified by the Director of Human Resources. Such grants require recommendation of the DHR Director and the approval of the King County Executive or designee.

Department directors will identify employees who occupy FLSA-exempt positions which require the employee to work substantially in excess of the employee's general work schedule on an ongoing, regular basis. Such employees may, at the discretion of the department director, receive up to ten (10) days of executive leave.

An employee whose base classification is paid on an "hourly basis" and who is assigned to work special duty in an FLSA-exempt classification is not eligible to receive executive leave.

Executive leave is usually granted at the beginning of the calendar year. New and transferred employees may also be granted executive leave during the calendar year, provided that the new duties require the employee to work substantially in excess of the general work schedule on an ongoing, regular basis.

Department directors shall report annually to the DHR Director, or designee, by December 31st of each year the executive leave to be granted the following calendar year to current employees. The report shall include the employee name and number of days to be granted including any days authorized by a collective bargaining agreement. In addition, any executive leave which was granted to newly hired or transferred employees during the past calendar year must also be included in the report. Should executive leave be granted to employees at other times of the year, department directors shall supplement and update the report throughout the year as executive leave is granted.

FLSA-exempt employees must schedule and receive approval for use of executive leave in accordance with departmental policies.

Executive leave may be used for any reason and must be used in full-day increments.

Executive leave must be used in the calendar year for which it is granted and shall not be carried into the next calendar year or cashed out.

Executive leave must be used prior to any transfer, promotion or demotion during the calendar year or it will be forfeited unless the new position meets the criteria for granting of executive leave and the department director of the new position agrees to the transfer of any unused executive leave in writing. In no case shall an employee receive more than ten (10) days of executive leave in a calendar year regardless of movement between positions (except for executive leave granted to department directors). When an FLSA-exempt employee granted executive leave is approved for a change in FLSA-exempt status, the employee may not use executive leave during the time period in an FLSA non-exempt status. Executive leave not used prior to separation from employment will be forfeited. There shall be no cash-out of executive leave.

FLSA-exempt employees who are covered by a collective bargaining agreement are not eligible for executive leave unless such leave is specifically authorized by the applicable union contract.

Salary Deductions

King County's policy is to comply with the salary basis requirements of the FLSA and the WMWA and therefore prohibits supervisors from making any improper deductions from the salaries of FLSA-exempt employees. Deductions from pay are permissible when an FLSA-exempt employee is absent from work for one or more full days for personal reasons other than sickness or disability (*i.e.*, the FLSA-exempt employee has no vacation leave accruals but needs to attend a family function for two full work days and the employee's request for two unpaid leave days has been approved); for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to sickness or disability (*i.e.*, the FLSA-exempt employee has no sick leave accruals but, due to a serious health condition, needs to take unpaid leave under the King County Family Medical Leave Ordinance; or the FLSA-exempt employee has no sick leave accruals but, due to a bona fide disability, needs to take unpaid leave under the Executive's Disability Accommodation in Employment policy); or for unpaid disciplinary suspensions of one or more full days imposed in good faith for violations of safety rules of major significance.

King County employees must be made aware of this policy by their supervisor and must be made aware that King County does not allow deductions that violate the FLSA or the WMWA. When an employee believes that an improper deduction has been made to their salary, they should report this to their division director or designee, Human Resources Manager, the DHR Director, the department's lead human resources personnel or designee, as soon as possible. Concerns of improper deductions will be promptly investigated. These types of concerns should be reported to the DHR Director, or designee, via the department's Human Resources Manager, or the department's lead human resources personnel. Human resources shall consult with department payroll personnel when investigating the report. If it is determined that an improper deduction has occurred, the Human Resources Manager shall ensure reimbursement for any improper deductions made and King County will take appropriate steps to ensure future compliance.

King County does not tolerate retaliation for reporting concerns of alleged violations of this policy. Such action is misconduct in violation of this policy and may be subject to discipline, up to and including termination.

This policy does not constitute an express or implied contract. It is a general statement of county policy that cannot form the basis of a private right of action.

PROCEDURES

Action By: Department director

Action: Determines which FLSA-exempt employees are eligible for executive leave and reports the granting of executive leave to current employees to the DHR Director or designee, by December 31st of each year. In addition, the department director reports the granting of executive

leave during the current year for new or transferred employees by December 31st of each year. Should executive leave be granted to employees at other times of the year, the department director shall supplement the report to the DHR Director or designee throughout the year as executive leave is granted.

Action By: FLSA-exempt employee

Action: Submits in accordance with this and departmental policies a written request to schedule and request approval for use of executive leave or other leave benefits for absences of one full day or longer. Notifies and requests authorization of their supervisor when they will be absent for part of the workday. The notification and request shall be made in a manner as determined by the department.

Action By: Supervisor

Action: Reviews written request for full-day absence; approves or denies request or forwards to decision maker; forwards written approval or denial of request for full-day absence to employee. Reviews request for partial-day absence and approves or denies partial-day absence request according to the method established by the department. Assures that the employee is working the hours necessary to perform work assignments satisfactorily and is working a specified schedule, if the appointing authority has set one.

Action By: DHR Director, or designee

Action: Approves or denies a written request from department director to compensate an FLSA-exempt employee on an hourly basis. Monitors the proper application of this policy.

RESPONSIBILITIES

FLSA-exempt employees shall:

- Work the hours necessary to perform work assignments satisfactorily and work a specified schedule if one is set by the appointing authority;
- Notify their supervisor when they will be absent for part of a workday;
- Obtain advance approval in writing for any planned absences of one or more full days;
- Schedule and receive written approval from their supervisor before using executive leave; and
- Report to the Human Resources Manager or lead department human resources personnel, as soon as possible, when they believe that an improper deduction has been made to their salary.

Supervisors shall:

- Monitor employee work performance;
- Approve or deny requests for use of executive leave, paid leave and other leave benefits;
- Ensure that employees are compensated in accordance with the FLSA, the WMWA; Personnel Guidelines, and/or an applicable collective bargaining agreement; and
- Ensure that employees are aware of King County's policy to comply with the salary basis requirements of the FLSA and the WMWA which prohibits improper deductions from the salaries of FLSA-exempt employees.

Human Resources Managers or lead department human resources personnel shall:

- Promptly investigate the report of an alleged violation of this policy, consult with department payroll personnel and ensure reimbursement to the employee if it is determined that an improper deduction has occurred;
- Report to the DHR Director, or designee, any instances of reported improper deductions from the salaries of FLSA-exempt employees; and
- Ensure appropriate steps are taken to ensure future compliance should an improper deduction occur.

Department directors or designees shall:

- Ensure that managers and supervisors receive training to correctly compensate FLSA-exempt employees and hourly employees in compliance with the FLSA, the WMWA, county ordinances and the provisions of this policy;
- Identify whether it would be in the best interest of the county to compensate an FLSA-exempt employee on an hourly basis rather than a salary basis and request authorization of the DHR Director, or designee, to do so;
- Identify employees who occupy FLSA-exempt positions which require the employee to work substantially in excess of the employee's general work schedule on an ongoing, regular basis and who may therefore be eligible for up to ten (10) days of executive leave each calendar year;
- Identify and inform payroll of those FLSA-exempt employees who are required to work on the Indigenous Peoples' Day holiday because of the state court schedule.
- Notify the DHR Director, or designee, by December 31st of each year of FLSA-exempt employees granted executive leave for the next calendar year for current employees, including the number of days granted; as well as reporting any executive leave granted during the year to newly hired or transferred employees; and supplementing the report throughout the year as executive leave is granted; and
- Review all positions designated as part-time FLSA-exempt at least annually to ensure that the part-time designation continues to be appropriate.

Department payroll personnel shall:

- Ensure that FLSA-exempt employees are paid in accordance with this policy; and
- Record executive leave granted and used.

The DHR Director, or designee, shall:

- Determine which positions are FLSA-exempt and periodically review the FLSA exemption status;
- Approve or deny requests from department directors to pay FLSA-exempt employees on an hourly rather than a salary basis;
- Promptly investigate the report of an improper deduction and ensure reimbursement to the employee if it is determined that an improper deduction has occurred;
- Take appropriate steps to ensure future compliance should an improper deduction occur;
- Develop an executive summary of this policy to be provided to employees during the New Employee Orientation and to employees who change to an FLSA-exempt status; and
- Monitor proper application of this policy and require correction of conduct when actions inconsistent with this policy are discovered.

QUESTIONS

Refer questions or comments to your agency's [Human Resources Manager](#) or the Department of Human Resources.