

## DIFFERENCES BETWEEN AFSCME CONTRACT AND FLSA REGULATIONS - NON-EXEMPT EMPLOYEES

	<u>FLSA</u>	<u>AFSCME</u>
<b>GENERAL CONCEPTS</b>		
Definition of Overtime	For both full & part-time employees, hours worked over 40 in a workweek of 7 consecutive calendar days. No limit on hours per day; no special treatment based on when work occurs (holidays, evenings, nights). OT need not be assigned or approved; if an employee is permitted or “suffered” to work, the time must be counted.	For full-time employees & for part-time employees scheduled to work 8 or more hours per day, OT is hours worked outside of the employee’s posted work schedule. For part-time employees scheduled to work less than 8 hours per day, OT is any time worked after 8 hours in the day or any hours worked on a scheduled day off.
Definition of “Hours Worked”	Actual time worked excluding paid & unpaid time off (vacation, sick & other leaves, holidays, comp time) but including travel time beyond the normal home to work commute (see separate handout). Time spent on call typically doesn’t qualify (see below). Meal breaks are excluded if duty free & at least 30 minutes in length.	All hours for which the employee receives pay for time worked or paid leave, including holidays, sick leave, vacation, compensatory time off & any other paid leave of absence.
<b>SCHEDULING TO AVOID OVERTIME</b>		
Hours Balancing	No restrictions or notice requirements so long as the employee doesn’t exceed 40 hours in a workweek (i.e., can’t balance <u>across</u> workweeks except as described below in “Substitution”).	Scheduling changes within the 14 day posting period are permitted if the change is requested by the employee & approved by the supervisor. If a supervisor requires an employee to balance hours, any hours worked outside the original work schedule must be paid at the overtime rate of 1½ times the regular rate of pay. (Community Colleges: See also MnSCU supplement, Part 3, provision 27)
Substitution	With supervisory approval, 2 employees may voluntarily substitute for each other (exchange shifts) within or between workweeks. Hours are treated as if the employees worked their originally scheduled shifts.	Shift exchange – qualified & capable employees may mutually exchange days, shifts or hours of work with supervisory approval; request cannot be unreasonably denied. Exchange does not result in OT unless required by FLSA.
<b>FORM OF OT PAYMENT</b>		
Cash	1½ times the employee’s “regular rate of pay” for the workweek, which includes certain amounts beyond hourly wage (shift differential, on call pay).	All hours paid in cash at 1½ times the employee’s hourly rate (plus differentials).

	<b><u>FLSA</u></b>	<b><u>AFSCME</u></b>
Compensatory Time	Pursuant to a contract or MOU, public employers may pay OT in comp time credit at the rate of not less than 1½ hours for each OT hour worked. Employee must agree to comp time in lieu of cash OT, but this can be done via contract. Maximum comp time bank is 240 hours for the types of employees employed by MnSCU.	Employee may choose to have OT hours placed in comp bank with selection made on a daily basis. Rate is 1½ hours of comp time per hour of OT. Comp bank maximum is 150 hours. Once limit is reached, OT hours paid in cash. (Community Colleges: See also MnSCU supplement, Part 3, provision 29.)
Comp. Time Usage	Must permit employees to use accrued time within a reasonable period after requesting if use doesn't unduly disrupt operations. Recent Supreme Court decision allows employers to schedule use of accrued time unless prohibited by contract.	With 14 days advance notice, supervisors may schedule employees to use accrued comp time in increments of full work days; employer can not reduce comp bank below 50 hours. Employees requesting comp time off with 14 days notice shall be granted time off provided it does not unduly disrupt operations of employer or require payment of additional salary costs. Requests for comp time off with less than 14 days notice may be granted at the employer's discretion.
Comp. Time Liquidation	May be liquidated in cash during employment. Must be liquidated in cash upon permanent separation.	Appointing Authority may liquidate comp banks 2 times per fiscal year with 30 days notice to the Local - must apply to all members of the seniority unit, unless local and AA agree otherwise. Comp banks are liquidated in cash when an employee transfers to another AA, accepts a position not represented by the union, separates from state service, or is placed on permanent layoff; employees on seasonal layoff may have comp bank liquidated in cash at their option.
<b>OTHER RELATED CONCEPTS</b>		
Call-In/Call-Back	Not overtime, but must count the hours actually worked against the limit of 40 hours for the workweek.	<b>Call-In:</b> Employees called in prior to regularly scheduled shift are paid at OT rate until regular shift begins; employees must receive a minimum payment equal to 1 hour at straight time or the time worked at OT rate, whichever is greater <b>Call-Back:</b> Employees called back after regularly scheduled shift & not assigned such work by the end of their last worked shift receive a minimum of 2 hours at the OT rate; also receive mileage to & from work station if using own vehicle.
On-Call	Not time worked unless employees actually perform work or are so restricted that they can't reasonably use the time for their own purposes. Having to be available by phone or pager isn't sufficient to require treatment as time worked.	Employees receive 15 minutes straight time for each 1 hour of on-call to a maximum of 4 hours straight time pay per calendar day. If called in during on-call time, receive pay according to "call-in" language above; employees cannot receive on-call pay for hours actually worked. Payment is in cash or comp at employee's option.

## DIFFERENCES BETWEEN MAPE CONTRACT AND FLSA REGULATIONS - NON-EXEMPT EMPLOYEES

		<u>FLSA</u>	<u>MAPE</u>
<b>GENERAL CONCEPTS</b>			
Definition of Overtime	For both full & part-time employees, hours worked over 40 in a workweek of 7 consecutive calendar days. No limit on hours per day; no special treatment based on when work occurs (holidays, evenings, nights). OT need not be assigned or approved; if an employee is permitted or “suffered” to work, the time must be counted.		Same as FLSA.
Definition of “Hours Worked”	Actual time worked excluding paid & unpaid time off (vacation, sick & other leaves, holidays, comp time) but including travel time beyond the normal home to work commute (see separate handout). Time spent on call typically doesn’t qualify (see below). Meal breaks are excluded if duty free & at least 30 minutes in length.		Same as FLSA for employees in classes with salary range maximums <u>at or above</u> the maximum of range 7L. For employees in classes with maximums <u>below</u> the 7L maximum, vacation, sick leave & holidays count as time worked but comp time & all other leaves are excluded.
<b>SCHEDULING TO AVOID OVERTIME</b>			
Hours Balancing	No restrictions or notice requirements so long as the employee doesn’t exceed 40 hours in a workweek (i.e., can’t balance <u>across</u> workweeks except as described below in “Substitution”).		Temporary schedule changes are permitted without 14 days notice (i.e., can avoid OT by requiring employees to balance hours within the workweek). Employees may adjust or exchange hours, with supervisory approval, if the change doesn’t result in contract OT.
Substitution	With supervisory approval, 2 employees may voluntarily substitute for each other (exchange shifts) within or between workweeks. Hours are treated as if the employees worked their originally scheduled shifts.		Employees may adjust or exchange hours, with supervisory approval, if the change doesn’t result in contract OT.
<b>FORM OF OT PAYMENT</b>			
Cash	1½ times the employee’s “regular rate of pay” for the workweek, which includes certain amounts beyond hourly wage (shift differential, on call pay).		1½ times the employee’s hourly rate (plus shift differential, if applicable).

	<b><u>FLSA</u></b>	<b><u>MAPE</u></b>
Compensatory Time	Pursuant to a contract or MOU, public employers may pay OT in comp time credit at the rate of not less than 1½ hours for each OT hour worked. Employee must agree to comp time in lieu of cash OT, but this can be done via contract. Maximum comp time bank is 240 hours for the types of employees employed by MnSCU.	May liquidate OT in comp time only by mutual agreement with employee. Rate is 1½ hours of comp time per hour of OT. Appointing Authority establishes comp bank limit of at least 40 hours but not more than 80 hours.
Comp. Time Usage	Must permit employees to use accrued time within a reasonable period after requesting if use doesn't unduly disrupt operations. Recent Supreme Court decision allows employers to schedule use of accrued time unless prohibited by contract.	If requested 14 or more days in advance, employee must be permitted to use comp time unless use unduly disrupts operations or requires payment of additional salary costs. Requests with less than 14 days notice or for weekend shifts may be granted at the supervisor's discretion. Supervisors may schedule use by written notice to the employee prior to the scheduled time off.
Comp. Time Liquidation	May be liquidated in cash during employment. Must be liquidated in cash upon permanent separation.	Liquidated annually on date specified in advance by the Appointing Authority
<b>OTHER RELATED CONCEPTS</b>		
Call-In/Call-Back	Not overtime, but must count the hours actually worked against the limit of 40 hours for the workweek.	Employees called in/called back outside their regularly scheduled shift must be paid a minimum of 2 hours at the appropriate OT rate. (If the employee exceeds 40 hours worked in that workweek, the appropriate rate is 1½; if not, it's straight time.) On call backs, must also reimburse mileage to & from work station & home.
On-Call	Not time worked unless employees actually perform work or are so restricted that they can't reasonably use the time for their own purposes. Having to be available by phone or pager isn't sufficient to require treatment as time worked.	15 minutes of straight time pay per hour of assigned on-call to a maximum of 4 hours pay per calendar day. Assignment must be at least 8 consecutive hours. Employees aren't required to remain in a fixed location but are required to leave word where they may be reached or may be provided with a pager.

## DIFFERENCES BETWEEN MMA CONTRACT AND FLSA REGULATIONS - NON-EXEMPT EMPLOYEES

		<u>FLSA</u>	<u>MMA</u>
<b>GENERAL CONCEPTS</b>			
Definition of Overtime	For both full & part-time employees, hours worked over 40 in a workweek of 7 consecutive calendar days. No limit on hours per day; no special treatment based on when work occurs (holidays, evenings, nights). OT need not be assigned or approved; if an employee is permitted or “suffered” to work, the time must be counted.		<b>Progression Codes 2 &amp; 3:</b> OT is defined as all hours in excess of the established work day; before or after the regularly scheduled shift; or on a scheduled day off; <b>Progression Code 1:</b> OT is defined as all hours worked in excess of the normally scheduled 80 hour pay period. However, FLSA supersedes.
Definition of “Hours Worked”	Actual time worked excluding paid & unpaid time off (vacation, sick & other leaves, holidays, comp time) but including travel time beyond the normal home to work commute (see separate handout). Time spent on call typically doesn’t qualify (see below). Meal breaks are excluded if duty free & at least 30 minutes in length.		Same as FLSA.
<b>SCHEDULING TO AVOID OVERTIME</b>			
Hours Balancing	No restrictions or notice requirements so long as the employee doesn’t exceed 40 hours in a workweek (i.e., can’t balance <u>across</u> workweeks except as described below in “Substitution”).		Schedule changes are permitted without a minimum posting requirement. Changes may be initiated by either the supervisor or the employee, but employee initiated changes require approval of supervisor.
Substitution	With supervisory approval, 2 employees may voluntarily substitute for each other (exchange shifts) within or between workweeks. Hours are treated as if the employees worked their originally scheduled shifts.		MMA contract does not have language that addresses swapping of shifts between employees. Two employees in classes with Progression Code 1 could swap hours within the same workweek with the approval of the supervisor. This is really coordinated balancing of hours.
<b>FORM OF OT PAYMENT</b>			
Cash	1½ times the employee’s “regular rate of pay” for the workweek, which includes certain amounts beyond hourly wage (shift differential, on call pay).		For classes in Progression Codes 2 & 3, OT hours are paid at 1½ times the employee’s hourly rate. For non-exempt employees in Progression Code 1, the contract specifies straight time but FLSA supersedes so employees are paid at 1½ times their hourly rate.

	<b><u>FLSA</u></b>	<b><u>MMA</u></b>
Compensatory Time	Pursuant to a contract or MOU, public employers may pay OT in comp time credit at the rate of not less than 1½ hours for each OT hour worked. Employee must agree to comp time in lieu of cash OT, but this can be done via contract. Maximum comp time bank is 240 hours for the types of employees employed by MnSCU.	Employee may choose to have OT hours placed in comp bank. For non-exempt employees, rate is 1 ½ hours of comp time for each hour of OT. Maximum hours in bank is 120; all hours over 120 are paid in cash.
Comp. Time Usage	Must permit employees to use accrued time within a reasonable period after requesting if use doesn't unduly disrupt operations. Recent Supreme Court decision allows employers to schedule use of accrued time unless prohibited by contract.	With 14 days advance notice, the supervisor may schedule the employee to use accrued compensatory time in increments of full workdays, as long as the employee's compensatory time bank is not reduced to less than 40 hours as a result. Employees requesting comp time off with 14 days notice shall be permitted to use such time if it does not disrupt the operations of the employer or require payment of additional salary costs. Requests for comp time off with less than 14 days notice may be granted at the employer's discretion.
Comp. Time Liquidation	May be liquidated in cash during employment. Must be liquidated in cash upon permanent separation.	Appointing Authority may liquidate comp banks 4 times per year at beginning of pay periods closest to 1/1, 4/1, 7/1 and 10/1 with 30 days written notice to the Association; must apply uniformly to all employees in the seniority unit. Comp banks are liquidated in cash when an employee transfers to another AA, accepts a position not represented by the Association, separates from state service or is placed on permanent layoff; employees on seasonal layoff may have comp banks liquidated in cash at their option.
<b>OTHER RELATED CONCEPTS</b>		
Call-In/Call-Back	Not overtime, but must count the hours actually worked against the limit of 40 hours for the workweek.	Call Back: Any continuous operations employee or any employee in an emergency situation who is called back to work after the regularly scheduled shift shall be paid a minimum of 2 hours at the appropriate overtime rate (either 1½ times their regular hourly rate or straight time).
On-Call	Not time worked unless employees actually perform work or are so restricted that they can't reasonably use the time for their own purposes. Having to be available by phone or pager isn't sufficient to require treatment as time worked.	An employee instructed to remain in on-call status shall be compensated on the basis of \$45 for each 24-hour period or part thereof, not to exceed \$280 per week.