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Summary of Changes for Subchapter 440

Note that changes are cumulative. Numbering of a section may be modified by a change made subsequently.

1. Overall ELM Revisions

The entire ELM is reformatted, with changes in typographical treatment where necessary, for ease of use for printing and online viewing. Addresses are reformatted to reflect machine readability standards.

Addresses and telephone numbers are updated in the text, and Appendix C, Addresses, previously added by PB 21809, 2/20/92, is deleted.

Form titles in the text and in Appendix B, Form Titles, were updated when the ELM was issued online in 1996. Any subsequent updating is noted in the revisions specific to this segment noted below. (PB 21929, 9/26/96)

2. Revisions Specific to This Segment

Substantive changes are marked with vertical bars in the margins or printed in bold type in tables and certain exhibits.

444.214 Exclusions Not Creditable is amended to be consistent with 444.213. (PB 21944, 4/24/97)

444.222 Exclusions is amended to clarify the nature of exclusions from the definition of *actual work*. The 4/24/97 change removes the word "compensable." (PB 21768, 7/26/90) (PB 21944, 4/24/97)

444.324 Pay on a Salary Basis (under **Fair Labor Standards Act Administration, Exempt Positions**) is modified to reflect the new family and medical leave policy found in 515. (PB 21847, 8/5/93)

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440 Fair Labor Standards Act (FLSA) Administration

441 Overview

441.1 Federal Statute

The Fair Labor Standards Act (FLSA), as amended, is a federal statute of general application which establishes requirements for: (a) child labor, (b) minimum wage, (c) equal pay, and (d) overtime pay.

441.2 Enforcement

The FLSA authorizes the Department of Labor (DOL) to: (a) investigate for compliance with provisions of the Act and (b) to supervise the payment of unpaid wages or unpaid overtime compensation owing to any employee in the event of violations. The Law also provides for enforcement in the courts.

442 USPS Coverage

442.1 Effective Date

USPS employees became subject to the provisions of the FLSA as administered by the Department of Labor, effective May 1, 1974.

442.2 Exclusions

Equal pay and overtime pay are the only two topics required to be addressed in the ELM, since current USPS policy and pay schedules, which exceed the minimum wage requirements of the FLSA, preclude the need for discussion of child labor and minimum wages.

442.3 FLSA Poster

All postal facilities, including classified stations and branches, are required to conspicuously display FLSA Poster 42, *To Employees of the U.S. Postal Service*. Bulletin boards near time clock areas should be used for this purpose. This poster may be obtained by submitting a special requisition Form 7380, *Supply Center Requisition*, to the appropriate area supply center.

443 Equal Pay Provisions

443.1 Sex Discrimination Policy

The FLSA, Section 6(d)(1), prohibits employer discrimination of employees on the basis of sex. Employees of both sexes are to receive equal wages for equal work on jobs which require equal skill, effort and responsibility and are performed under similar working conditions.

443.2 Justified Wage Differentials

Wage differentials may exist based on (a) a seniority system, (b) a merit system, (c) a system which measures earnings by quantity of production, or (d) any other factor other than sex.

443.3 Labor Organization Intervention

No labor organization may cause or attempt to cause the employer to discriminate against an employee in violation of 443.1 and 443.2.

443.4 USPS Coverage

The equal pay (sex discrimination) provisions of the FLSA apply to all USPS employees even though they may be exempt from the overtime pay provisions of the Act.

444 Overtime Pay**444.1 Policy**

The FLSA provides that the USPS must pay an employee covered by the overtime provisions of the Act (an FLSA nonexempt employee) at one and one-half times the employee's *regular rate* for all hours of *actual work* in excess of 40 hours in any FLSA *work week*. See 445 for special provision covering rural letter carriers.

444.2 Explanation of Terms**444.21 Regular Rate****444.211 Definition**

An employee's *regular rate of pay* is defined as *all remuneration for employment* received during an FLSA workweek divided by the hours that the employee actually worked.

444.212 Inclusions

All remuneration for employment includes:

- a. Total base straight time pay, including COLA, for work performed.
- b. Total straight time pay differential for higher level work performed.
- c. Total territorial cost-of-living allowance (TCOLA) paid for hours actually worked.
- d. Total night differential paid.
- e. Total premium paid for work performed on a Sunday.
- f. Total base straight time pay, including COLA, for work performed on a holiday.
- g. Total base straight time pay, including COLA, of a city letter carrier covering those hours not worked between the seventh and eighth hour of a regular scheduled day (7:01 rule). See 432.53.

- h. Total pay received for steward's duty time, in accordance with the applicable collective-bargaining agreement.
- i. Total meeting and training time pay.
- j. Total pay for travel time.
- k. Total straight time pay during scheduled tour and/or scheduled overtime spent waiting for or receiving medical attention (see 432.74).
- l. Total pay for time that computer programmer and systems analyst employees are required to carry an electronic pager.

444.213 **Exclusions**

All remuneration for employment excludes:

- a. Pay for time not worked, such as annual leave, sick leave, holiday leave pay, guaranteed time not worked, etc.
- b. The 50 percent overtime pay premium for work in excess of 8 hours in a day or 40 hours in a week.
- c. The 100 percent premium paid for penalty overtime.
- d. The 50 percent premium paid for work outside of an employee's schedule or for emergency rescheduling.
- e. The 50 percent premium paid for work performed on Christmas day.
- f. TCOLA paid for leave hours and other time not worked.
- g. That portion of the higher level pay differential paid on leave hours and other time not worked.
- h. The 50 percent holiday scheduling premium paid under the provisions of the Holiday Settlement Agreement.
- i. That portion of the basic straight time pay of a part-time flexible employee paid in lieu of holiday leave pay.

444.214 **Exclusions Not Creditable**

The exclusions listed above in subsection 444.213(a), (f), (g), and (i) are not creditable toward FLSA overtime compensation that is due.

444.215 **Dual Employment Rate**

When an employee in a single service week works in *two* or more positions having different rates of pay, the regular rate for the week includes the weighted average of the base straight rates (including COLA) for all such positions, that is, the total base straight time pay, including all other remuneration for employment, for work performed divided by the hours worked.

444.22 **Actual Work**

444.221 **Definition**

Actual work is defined as all time which management suffers or permits an employee to work.

444.222 **Exclusions**

Actual work does not include any paid time off, but does include steward's duty time, time off authorized for a city letter carrier under the 7:01 rule (see 432.53), and travel, meeting, and training time (see 438).

444.223 **Unauthorized Time**

The reason for an employee continuing to work, with specific approval or disapproval, is immaterial. It is the duty of supervisors to exercise control over the working hours of their subordinates by making sure that employees complete their duties and clock out promptly at the completion of their tour if additional work is not desired or authorized. See 432.7 for disallowed time.

444.23 **FLSA Work Week (see 432.42 for Service Week)**444.231 **Explanation**

The FLSA work week for all employees is a fixed and regular recurring period of 168 hours — seven consecutive 24-hour periods. Once the beginning time of an employee's work week is established, it remains fixed regardless of the schedule of hours worked. The beginning of the FLSA work week may be changed only if the change is intended to be permanent and is not designed to evade the payment of overtime.

444.232 **Permanent Change**

When there is a permanent change in an employee's work week which causes some of the working time to fall within hours that are included in both the *old* and *new* work week, the employee's pay is calculated as follows:

- a. Assume first that the overlapping hours are to be counted as hours worked only in the *old* work week and not in the *new*; compute straight time and overtime compensation due for each of the 2 work weeks on this basis and total the two sums.
- b. Assume now that the overlapping hours are to be counted as hours worked only the *new* work week and not in the *old*; complete the total computation accordingly.
- c. Pay the employee an amount not less than the greater of the amounts computed by methods a. and b. above.

444.233 **Full-Time Employees**

The FLSA work week for full-time employees is 168 consecutive hours established as follows:

- a. For an employee whose regular schedule includes Saturday as a service day, the FLSA work week begins 8 hours prior to the beginning of the employee's regular schedule for that service day.

Example 1. Full-time Employee A has a regular schedule starting time of 11:00 p.m. Friday night. By definition, the employee's USPS service day is Saturday. Based on the FLSA work week definition, the employee's FLSA work week begins at 3:00 p.m. Friday.

Example 2. Full-time Employee B has a regular starting time of 1:00 a.m. Saturday. By definition, the employee's USPS service day is Saturday. Based on the FLSA work week definition contained in

432.443, the employee's FLSA work week in this situation begins at 5:00 p.m. Friday.

- b. For an employee whose regular schedule does not include Saturday as a service day, the FLSA work week is established by considering Saturday as if it were a service day; and the starting time is the same as the regularly-scheduled starting time on the first scheduled service day in the service week. Thus, the employee's FLSA work week begins 8 hours prior to this Saturday service day starting time.

Example: Full-time Employee C has Saturdays and Sundays off and her or his first scheduled work day is Monday at 6:00 a.m. For purposes of establishing the FLSA work week, the 6:00 a.m. is considered as a Saturday service day starting time. Based on the FLSA work week definition above, the employee's FLSA work week begins at 10:00 p.m. Friday.

444.234 **Part-Time Employees**

The FLSA work week for part-time employees is 168 consecutive hours established as follows:

The employee's normal starting time as established by the installation head (for a part-time regular, this is his or her regularly-scheduled starting time), is used as the basis for establishing the FLSA work week by considering such starting time as if it were a Saturday service day starting time. The beginning of the FLSA work week is 8 hours prior to this Saturday service day starting time, *but in no case does it begin prior to 8:00 p.m. Friday.*

Example 1. Part-time flexible employee E normally reports to her or his pay location at 11:00 p.m. For purposes of establishing the FLSA work week, the 11:00 p.m. starting time is considered a Saturday service day starting time, i.e., 11:00 p.m. Friday night. Applying the above FLSA work week definition, the employee's FLSA work week begins at 8:00 p.m. Friday.

Example 2. Part-time flexible employee F normally reports to her or his pay location at 3:00 p.m. For purposes of establishing the FLSA work week, the 3:00 p.m. starting time is considered a Saturday service day starting time. Applying the above FLSA work week definition, the employee's FLSA work week begins at 7:00 a.m. Saturday.

Example 3. Part-time regular employee G is regularly scheduled to report to his or her pay location at 6:00 p.m. For purposes of establishing the FLSA work week, the 6:00 p.m. starting time is considered a Saturday service day starting time. Applying the above FLSA work week definition, the employee's FLSA work week begins at 10:00 a.m. Saturday.

444.3 **Exemptions**

444.31 **Policy**

444.311 **General**

The FLSA exempts from its overtime provisions any employee employed in a bona fide *executive, administrative, or professional* capacity who is paid on a salary basis. Definitions of these exempt positions are given in 444.32.

444.312 USPS Administration

FLSA exemption determinations are made by Headquarters, Office of Organizational Requirements.

444.313 Dual Assignments

Any employee who performs executive, administrative, or professional work, or any combination that meets the requirements of each exemption category, is considered exempt provided not more than: (a) 20 percent of the employee's total workhours in a service week are devoted to nonexempt work or (b) 50 percent of the employee's total workhours in a service week are devoted to nonexempt work and the employee is compensated at a rate of at least \$250 a week or \$13,000 per year.

444.32 Exempt Positions**444.321 Executive Employee**

Employees employed in a bona fide executive capacity meet the following requirements:

a. Categories:

- (1) An employee who is paid on a salary basis at a rate of not less than \$250 per week (\$13,000 per year) and satisfies duty requirements 444.321b(1) (2).
- (2) An employee who is paid on a salary basis at a rate of not less than \$155 per week (\$8,060 per year) and meets duty requirements 444.321b(1)–(5).

b. Duty Requirements:

- (1) Primary duty consists of the management of the USPS or one of its facilities, departments, or subdivisions.
- (2) Customarily supervises the work of two or more full-time equivalent employees (FTEs). FTEs consist of any, or all, career employees who are customarily and regularly assigned to an installation, or a recognized subdivision of the installation. The total FTEs assigned to a unit are defined as (1) the number of full-time employees plus (2) 1/40 of the total average weekly straight time hours of all part-time regular and flexible employees, rounded to the lower whole number. Casuals, temporaries, replacements, and any other members of the supplemental workforce are not included in the determination of FTE.
- (3) Customarily and regularly exercises discretionary powers.
- (4) Has the authority to hire or fire employees, or recommend hiring or firing employees, and promote, advance, and cause other status changes, or recommend promoting, advancing and causing other status changes to an extent that the recommendations will be given particular weight.
- (5) Who does not devote more than 20 percent of hours worked in the work week to activities which are not directly and closely related to the performance of work described in the first requirements of this section.

444.322 **Administrative Employee**

Employees employed in a bona fide *administrative* capacity meet the following requirements:

a. *Categories:*

- (1) An employee who is paid on a salary basis at a rate of not less than \$250 per week (\$13,000 per year) and satisfies duty requirements 444.322b(1)–(2).
- (2) An employee who is paid on a salary basis at a rate of not less than \$155 per week (\$8,060 per annum) and meets duty requirements 444.322b(1)–(4).

b. *Duty Requirements:*

- (1) Primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of the USPS or USPS customers.
- (2) Customarily and regularly exercises discretion and independent judgment.
- (3) Regularly and directly assists an employee employed in a bona fide executive or administrative capacity (444.321 and 444.322), or performs, under only general supervision, work along specialized or technical lines requiring special training experience or knowledge; or executes, under only general supervision, special assignments and tasks.
- (4) Does not devote more than 20 percent of hours worked in the work week to activities which are not directly and closely related to the performance of the work described in 444.322b(1)–(3).

444.323 **Professional Employee**

Employees employed in a bona fide *professional* capacity meet the following requirements:

a. *Categories:*

- (1) An employee is paid on a salary basis at a rate of not less than \$250 per week (\$13,000 per year) and meets duty requirements 444.323b(1)–(2).
- (2) An employee who is paid on a salary basis at a rate of not less than \$170 per week (\$8,840 per year) and meets duty requirements 444.323b(1)–(4).

b. *Duty Requirements:*

- (1) Primary duty consists of either (a) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course or specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or (b) work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or

- intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.
- (2) Work requires the consistent exercise of discretion and judgment in its performance.
 - (3) Work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.
 - (4) Not more than 20 percent of the hours worked in a work week are devoted to activities which are not an essential part of and necessarily incident to the work described in 444.323b(1)–(3).

444.324 **Pay on a Salary Basis**

Pay on a salary basis is defined as receiving a fixed salary regardless of the hours worked, or the quality or quantity of work performed. Deductions for annual or sick leave and leave without pay may be made in increments of full days only, except for leave taken in accordance with 515.61 and 515.62 (leave taken on an intermittent basis or by establishing a reduced work schedule because of a new son or daughter, because medically necessary to care for others, or because the employee is incapacitated). If an employee is not paid on a salary basis, even though all the other criteria for exemption are met, the employee must be classified nonexempt.

445 **Rural Letter Carrier Compensation**

445.1 **Regular Rural Carriers**

445.11 **Guaranteed Annual Wage**

The National Rural Letter Carrier Agreement conforms to Section 7(b)(2) of the FLSA. Certain regular rural carriers assigned to a route of 35 hours or more (31 paid miles or more) receive a guaranteed annual wage based on the number of hours, or miles, assigned to their route.

445.12 **Base Rate of Pay**

The base rate of pay for these rural carriers equals the base annual rate of a 40 hour evaluated route plus overtime at one and one-half times the base hourly rate for all assigned hours (equivalent miles) in excess of 2080 hours (2184 miles) a year. Hours worked in excess of 12 hours a day, or 56 hours in an FLSA work week, are payable at 150 percent of the carrier's regular rate.

445.2 **Other Rural Carriers**

Those rural carriers who are not covered under the guarantee provisions of Section 7(b)(2) of the FLSA are compensated at the rate for a 40 mile route in accordance with the compensation provisions in 433 and 434.

446 **Compliance Investigations**

446.1 **DOL On-Site Visit**

If a properly identified DOL Wage and Hour Inspector visits a postal facility, the following should be noted:

- a. The Act requires that records regarding pay, hours worked, and related data be open at any time for review by DOL Wage and Hour Inspectors.
- b. The installation head is expected to be cooperative and should answer all specific and reasonable questions related to pay practices in that facility and provide the pertinent data requested.
- c. Requests for general information or data which is not available at the installation should be referred to a representative in the Field Division Human Resources organization.

446.2 **DOL Findings**

DOL Inspectors should be requested to provide a written report of any informal allegation of FLSA violations and any investigative findings to the Field Division Director, Human Resources, in addition to the installation head.

446.3 **USPS Actions**

- 446.31 Upon receipt of the report, the installation head should forward comments and recommendations related to the allegations and findings to the Field Division Director, Human Resources, with a copy to the Director, Employee and Labor Relations at the MSC, or next level above the installation.
- 446.32 The Field Director, Human Resources should send copies of any investigative reports and all related correspondence to the Headquarters Compensation Services Division, Office of Organizational Requirements.
- 446.33 In accordance with the Donovan vs. USPS settlement agreement, the Postal Service will be afforded the opportunity to rectify an FLSA violation prior to the filing of any complaint or other formal enforcement action by DOL.
- 446.34 The installation head may not agree to any proposed remedial measure prior to consulting with the Field Division Compensation Staff or Headquarters Personnel Official, as appropriate.

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