

**RESOLUTION**

**REVISIONS TO THE FAMILY AND MEDICAL LEAVE, CIVIL LEAVE, AND**

**OVERTIME POLICIES OF THE JAMES CITY COUNTY**

**PERSONNEL POLICIES AND PROCEDURES MANUAL**

WHEREAS, it's the practice of the County to periodically review its personnel policies for conformance to laws and alignment with the County's values; and

WHEREAS, the Family and Medical Leave Act (FMLA) of 1993 policy description, employee requirements, and supervisor responsibility were revised to clarify provisions of the law; and

WHEREAS, the Civil Leave policy was changed to conform with changes in the law related to jury duty; and

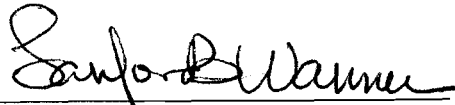
WHEREAS, the Overtime policy was changed to clarify provisions in the Federal Labor Standards Act.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached revisions to Sections 5.4.D, 5.4.E.4 and 4.14 of the James City County Personnel Policies and Procedures Manual.



Michael J. Brown  
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
HARRISON	AYE
GOODSON	AYE
MCGLENNON	AYE
BRADSHAW	AYE
BROWN	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2005.

- C. Definition of Immediate Family - The immediate family is defined as: spouse, parent, son, daughter, brother, sister, grandparents, grandchildren, step-children, step-parents, guardian, spouse's parent, and any persons residing in the same household as the employee.
- D. Family and Medical Leave Act (FMLA) of 1993 - is a Federal law which guarantees employees who have ~~worked for~~ *been employed by* the County for ~~12 months and worked~~ at least 1,250 hours in the previous 12 months, up to 12 weeks away from work during a fiscal year for the purposes outlined below. An employee must use the appropriate type of leave during the absence. An employee who is absent under the FMLA will retain his employee benefits. Upon returning to work, the employee will return to the same job or a job with equivalent status, pay, and benefits.
1. Purpose - FMLA protects employees' jobs and benefits for specified periods of time, if they are absent from work because of:
    - a. the birth of a child and the care of that child;
    - b. the adoption or foster care placement of a child with the employee;
    - c. the need to care for a spouse, child, or parent with a serious health condition; or
    - d. the serious health condition of the employee that makes the employee unable to perform the essential functions of his position.
  2. Definition - For purposes of this policy, a week is defined as the annual authorized hours of the employee's position divided by 52.
  3. Employee Requirements - An eligible employee ~~wishing to take~~ *requesting* time off for one of the purposes listed in 1. above must comply with certain requirements. An employee must:
    - a. inform his supervisor that he is requesting leave under the FMLA and of the purpose of the leave;
    - b. work with his supervisor to identify the type of County leave(s) which will be taken during the FMLA absence;
    - c. provide medical certification of the situation necessitating the absence and a date on which the employee can be expected to return to work;
    - d. keep the supervisor informed of the status of the absence, including any change in the circumstances for which the leave is being taken, and the employee's intent to return to work; and
    - e. provide a fitness for duty certification from a physician before returning to work if the leave was taken for the employee's own serious health condition.

4. Supervisor Responsibility - If an employee requests leave for one of the purposes listed in 5.4.D.1 above, *or when the supervisor recognizes an employee's leave qualifies under FMLA*, the supervisor ~~may~~ *shall* inform *Human Resources* and the employee that it qualifies under FMLA and ask the employee to follow the requirements covered in 5.4.D.3 above. ~~The supervisor~~ *Human Resources* shall inform the employee ~~who has requested or taken leave under FMLA~~, in writing, of his rights and responsibilities *under FMLA*.

E. Types of Leave - The County offers the following types of leave. A brief summary of purposes for which leave may be used is listed below. For more details, see individual subsections.

Annual Leave	Any purpose.
Sick Leave	Personal doctor appointment, illness, or short-term disability. Immediate family member doctor appointment or illness.
Funeral Leave	Death of immediate family member.
Civil Leave	Serving on a jury. Attending court as a witness under subpoena.
Military Leave	National Guard or reserve member to engage in annual active duty for training or called forth by Governor during a disaster.
School Leave	Meet with teachers, attend school functions, or do volunteer work in any public or private school grades K-12 or a licensed preschool or daycare center.
Leave Without Pay	Unpaid absences from work.

1. Annual Leave - may be used by an employee to provide paid absences for any purpose.

a. Accrual -

1) New employees will have available up to the equivalent of five (5) months of annual leave accrual upon employment. The leave will be available immediately and leave not used will be credited to the employee's annual leave balance at the beginning of the sixth (6th) month.

- c. Payment for Accumulated Leave Upon Separation from Employment - Employees with two (2) years or more of continuous service with the County shall be compensated for their sick leave balance at the rate of one hour's pay for every four hours of accrued sick leave or the maximum amount listed below, whichever is less. If two weeks' notice is not given by the employee, or if the employee is discharged for disciplinary reasons, sick leave payments shall be forfeited. Exceptions may be made by the department manager.

Years of Service	Maximum Payment
2 – 14	\$1,000
15 – 24	\$2,500
25 or more	\$5,000

- d. Sick Leave Bank - Employees may elect to pool accumulated sick leave into a sick leave bank for the purpose of providing participating employees additional leave for extended illness or injury. Such a bank shall be administered by employees, supported by employees, and shall cease to exist should there be insufficient employee interest.
- 3. Funeral Leave - may be used by an employee to provide paid absences upon the death of a member of an employee's immediate family.
    - a. Amount of Leave - Funeral leave, if requested by the employee, shall be granted by the supervisor for up to three (3) days per death of an employee's immediate family member. Exceptions may be granted by the department manager.
  - 4. Civil Leave - may be used by an employee to provide paid absences while serving on a jury, or attending court as a witness under subpoena.
    - a. Compensation - An employee compensated for civil duties, as by jury or witness fees, shall either take annual or compensatory leave, or turn over compensation received to the County.
    - b. Return to Work - Any employee serving four or more hours (including travel time) is not required to start any shift that begins between 5 p.m. and 3 a.m. following the court appearance. The time will be charged to Civil Leave.
    - b c. Exclusion - In those circumstances where a County employee is not subpoenaed and is acting as an expert witness in a court proceeding

which is not directly related to his duties for the County, the employee shall be charged annual or compensatory leave or leave without pay.

5. Military Leave - may be used by an employee who is a member of the organized reserve forces of any of the armed services of the United States, National Guard, or naval militia to provide paid absences of up to fifteen days per Federal fiscal year during which he is engaged in annual active duty for training, or when called forth by the Governor during a disaster.
  - a. Special Circumstances - Employees who are members of the forces listed above and are involuntarily called to Federally funded military active duty shall receive the following:
    - 1) A Military Pay Differential in the amount of the difference between the employee's military base pay plus basic allowances for housing and subsistence, and the employee's regular County base pay. If the employee's military pay plus allowance exceeds the County pay, no differential shall be paid.
    - 2) Up to one year's accrual of sick and annual leave credited to the employee 30 days after return to employment. Exceptions may be granted by the County Administrator.

(This section shall expire on 6/30/2005.)

6. School Leave - may be used by an employee to provide paid absences to perform volunteer work in a school, to meet with a teacher or administrator concerning the employee's children, step-children, or children over whom the employee has custody, or to attend a school function in which such a child is participating. School leave may be used for these purposes in a public or private elementary, middle, or high school, or a licensed preschool or daycare center.
  - a. Amount of Leave
    - 1) Employees in full-time permanent and limited-term positions may take up to eight (8) hours of School Leave per fiscal year.
    - 2) Employees in part-time permanent and limited-term positions may take up to the number of hours of their monthly sick leave accrual rate per fiscal year.
7. Leave Without Pay - may be used by an employee to provide unpaid absences for a variety of reasons outlined below including any mutually agreeable reason.

Section 4.14 Overtime

- A. Responsibility—~~The authorization and control of all overtime work is the responsibility of the department manager. Overtime assignments shall be permitted only when required by operational necessity. Department managers may require employees to work overtime assignments as necessary. Department managers shall assure that adequate funds are available for payment for overtime work.~~
  
- B. Eligibility—~~All employees except those in bona fide professional, administrative, executive, or seasonal positions, as defined by the Fair Labor Standards Act, are eligible to earn overtime. The Human Resource Department shall review each position to determine whether it is exempt or non-exempt from overtime payments. The status of job classes shall be indicated in the Compensation Plan, and the status of individual positions shall be indicated in the Human Resource Information System.~~
  
- C. Computation of Overtime Pay—~~Monetary overtime compensation shall be one and one-half times the employee's hourly rate of pay for each hour of overtime worked. The hourly rate of pay shall be determined by dividing the employees' annual salary by the number of hours per year that a full-time employee in that position or class would be required to work.~~
  
- D. Minimum Increment of Overtime—~~Overtime shall be earned in increments no smaller than thirty minutes.~~
  
- E. Computation of Overtime Hours
  - 1. ~~Overtime shall be paid when, due to operational necessity, a non-exempt employee is required to work in excess of the maximum number of allowable hours in the work period.~~
  
  - 2. ~~The work periods and maximum allowable hours for County employees are as follows:~~

<u>Category of Personnel</u>	<u>Work Period (Consecutive Days)</u>	<u>Allowable Hours</u>
Firefighting and EMS	21	159
Law Enforcement	24	147
All Other	7	40

~~Other work periods, in compliance with the overtime provisions of the Fair Labor Standards Act (FLSA), may be implemented with the approval of the County Administrator.~~

- ~~3. Paid or unpaid time off during which the employee is absent from the service of the County shall not be counted as hours worked in determining if the maximum allowable number of hours has been exceeded. Such absences include, but are not limited to, sick, annual, compensatory, civil, personal and military leave, holidays, leaves of absence, lunch periods and inclement weather days. This provision shall not apply to hours worked between the FLSA overtime maximum of 159 hours and the 168 regularly scheduled work hours for sworn Fire Department employees working a 21-day cycle. These 9 hours shall be paid at the rate of one half of the employee's hourly rate, in addition to the regular semimonthly pay, regardless of any paid time off taken during the 21-day cycle.~~

F. Compensatory Leave or Compensatory Time

- ~~1. Non-exempt employees who are authorized to work in excess of their regularly scheduled work hours, but who do not exceed the maximum allowable number of hours as defined in E above, may be granted compensatory leave in the amount of one hour of leave for each hour worked or may be paid their regular hourly rate in lieu of compensatory leave for hours worked.~~
- ~~2. Non-exempt employees who are authorized to work in excess of their regularly scheduled work hours, and the hours exceed the maximum allowable number of hours as defined in E above, may in lieu of overtime pay be granted compensatory leave in the amount of one and one-half hours of leave for each hour worked during the work period in excess of the maximum allowable hours.~~
- ~~3. The department manager shall determine the most appropriate form of compensation based on available funds and workload. Compensatory leave shall be specifically approved by the department manager in advance of its being earned.~~
- ~~4. Employees in sworn public safety positions may accrue up to 480 hours of compensatory leave. All other employees may accrue up to 240 hours of compensatory leave. Employees shall be paid for all hours in excess of the maximum allowed.~~
- ~~5. Compensatory leave earned within the fiscal year shall be used by September 30 of the following fiscal year or the employee shall be paid for it. (Revised 10-15-90)~~

A. Policy – In keeping with James City County's value of "Communicating openly and constructively and working in a collaborative manner", it is James City County's policy to comply with all requirements of the Fair Labor Standards Act (FLSA), including the salary basis requirements. Therefore, we will not make any improper deductions from the salaries of employees in non-exempt or exempt positions.

B. Legal Basis - The FLSA (29 C.F.R pt.541) is a federal law which requires that most employees in the United States be paid at least the federal minimum wage for all hours worked, and receive overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

C. Coverage

1. General - All paid employees are covered by the FLSA. However, Section 13(a)(1) of the FLSA provides an exemption from overtime pay for individuals employed in bona fide executive, administrative, and professional positions. Section 13(a)(1) and Section 13 (a)(17) also exempt certain employees in computer positions.

The Human Resource Department shall review each position to determine whether it is exempt or non-exempt from overtime payments. The status of job classes shall be indicated in the Compensation Plan, and the status of individual positions shall be indicated in the Human Resource Information System.

2. Exemptions

a. Salary Basis and Requirements - To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the FLSA regulations.

These salary requirements do not apply to teachers and employees practicing law or medicine. Employees in exempt computer positions may be paid at least \$455 per week on a salary basis or on an hourly basis at a rate of not less than \$27.63 an hour.

*Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a twice monthly basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work, but can be reduced because of disciplinary reasons.*

*Subject to exceptions listed below, an employee in an exempt position must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. However, employees in exempt positions do not need to be paid for any workweek in which they perform no work unless appropriate accrued paid leave is used.*

*If the employer makes deductions from an employee's predetermined salary because of the operating requirements of the business, that employee is not paid on a "salary basis." If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.*

*b. Salary Basis Exceptions*

*(i) Deductions from pay are permissible when an employee in an exempt position is either:*

*(a) absent from work for one or more full days for personal reasons, other than sickness or disability;*

*(b) absent from work for 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 illness;*

*(c) in receipt of payment for jury or witness fees, or for military pay;*

*(d) on an unpaid disciplinary suspension of one or more full days, imposed in good faith for workplace conduct rule infractions;*

*(ii) The employer is not required to pay an employee's full salary:*

(a) in the initial or terminal week of employment;

(b) for penalties imposed in good faith for infractions of safety rules of major significance; or,

(c) for weeks in which the employee takes unpaid leave under the Family and Medical Leave Act.

In these circumstances, either a partial-day or full-day deduction may be made.

D. Authorization - The authorization and control of all overtime work is the responsibility of the department manager. Overtime assignments shall be permitted only when required by operational necessity. Department managers may require employees to work overtime assignments as necessary. Department managers shall assure that adequate funds are available for payment for overtime work.

E. Computation of Overtime Pay

1. General - Monetary overtime compensation shall be one and one-half times the employee's hourly rate of pay for each hour of overtime worked. The hourly rate of pay shall be determined by dividing the employee's annual salary by the number of hours per year that the employee in that position is authorized to work.

2. Minimum Increment of Overtime - Overtime shall be earned in increments no smaller than fifteen (15) minutes.

3. Computation of Overtime Hours

a. Overtime shall be paid when, due to operational necessity, an employee in a non-exempt position is required to work in excess of the FLSA maximum number of allowable hours in the work period. The FLSA defines the maximum number of allowable hours in a work period of seven (7) days as forty (40). Section 207 (k) of the FLSA provides an exception for any employee in fire protection or law enforcement activities.

b. Categories of personnel, work periods, FLSA maximum number of allowable hours, and County authorized hours in a work period shall be indicated in the Compensation Plan.

*Other work periods, in compliance with the overtime provisions of the FLSA, may be implemented with the approval of the County Administrator.*

- c. *Paid or unpaid time off during which the employee is absent from the service of the County shall not be counted as hours worked in determining if the maximum allowable number of hours has been exceeded. Such absences include, but are not limited to, sick, annual, compensatory, civil, personal, and military leaves, holidays, leave without pay, lunch periods, and unexpected closings. (See Administrative Regulation No. 10.)*

*This provision shall not apply to hours worked between the FLSA overtime maximum hours and the regularly scheduled work hours for sworn Fire Department employees in a regular work period. These hours shall be paid at the rate of one half of the employee's hourly rate, in addition to the regular semimonthly pay, regardless of any paid time off taken during the regular work period.*

F. *Compensatory Time in Lieu of Overtime*

1. *Hour for Hour* – *Employees in non-exempt positions who are authorized to work in excess of their regularly-scheduled work hours, but who do not exceed the maximum allowable number of hours as defined in E.3 above may, in lieu of overtime pay, be granted compensatory time in the amount of one hour of leave for each hour worked or may be paid their regular hourly rate in lieu of compensatory time for hours worked.*
2. *Time and a Half* – *Employees in non-exempt positions who are authorized to work in excess of their regularly scheduled work hours, and the hours exceed the maximum allowable number of hours as defined in E.3 above may, in lieu of overtime pay, be granted compensatory time in the amount of one and one-half hours of leave for each hour worked during the work period in excess of the maximum allowable hours.*
3. *Authorization* - *The department manager shall determine the most appropriate form of compensation based on available funds and workload. Compensatory time shall be specifically approved by the department manager in advance of its being earned.*
4. *Maximum Accrual* - *Employees in sworn public safety positions may accrue up to 480 hours of compensatory time. All other*

*employees may accrue up to 240 hours of compensatory time. Employees shall be paid for all hours in excess of the maximum allowed.*

5. *Deadline for Use - Compensatory time earned within the fiscal year shall be used by September 30 of the following fiscal year or the employee shall be paid for it. (Revised 10-15-90.)*

G. Resolving Discrepancies

1. *Discrepancies – Employees who feel that an improper deduction has been made to their salary, or overtime was worked and they were not compensated appropriately, should immediately report this to their supervisor for resolution.*
2. *Complaint Procedure – In the event that a supervisor does not resolve the discrepancy, the employee will report the improper salary deduction or overtime payment denial to the Human Resource Department by completing the Improper Salary Deduction or Overtime Payment Denial Complaint Form.*
3. *Investigating a Complaint – Upon receipt of the completed Improper Salary Deduction or Overtime Payment Denial Complaint Form the Human Resource Department will promptly research the discrepancy.*
4. *Determination - If it is determined that an improper salary deduction or overtime payment denial has occurred, the employee will be promptly reimbursed for any improper salary deduction made or paid for overtime worked.*

Section 4.15 Holiday Pay

Any employee in a permanent or limited-term position who is eligible to earn overtime and is required by the supervisor to work on a holiday which is observed by the County, shall be compensated for that holiday at a rate of twice the regular hourly rate, or at the discretion of the department manager, authorized compensatory leave as outlined in Section 4.11(F) above.

An employee in a position which is not eligible to earn overtime (exempt) who is required to work on a holiday which is observed by the County, may take the holiday on another date mutually agreed upon with his supervisor. In cases where this would present a hardship because of work load, and where budget permits, the department manager may authorize payment for that holiday at a rate of twice the regular hourly rate for hours worked in lieu of another day off.

**IMPROPER SALARY DEDUCTION OR OVERTIME PAYMENT DENIAL  
COMPLAINT FORM**

*Name:* \_\_\_\_\_ *Position:* \_\_\_\_\_

*Department:* \_\_\_\_\_ *Supervisor:* \_\_\_\_\_

*Work telephone number:* \_\_\_\_\_ *Work E-mail Address:* \_\_\_\_\_

*Pay Period(s) of Questionable Deduction or Denial:* \_\_\_\_\_

*Please explain what occurred and why you believe it was improper:*

*Signed:* \_\_\_\_\_ *Date:* \_\_\_\_\_