

# 29 CFR 785.19 - Meal.

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## § 785.19 Meal.

**(a) *Bona fide meal periods.*** Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (*Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), *aff'd* 197 F. 2d 981 (C.A. 8, 1952), *cert. denied* 344 U.S. 888 (1952) ([http://www.law.cornell.edu/supct/cgi/get-us-cite?344 888](http://www.law.cornell.edu/supct/cgi/get-us-cite?344%20888)); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), *aff'd* 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C. A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); *aff'd* 136 F. 2d 359 (C.A. 10, 1943); *cert. denied* 320 U.S. 772 (1943) ([http://www.law.cornell.edu/supct/cgi/get-us-cite?320 772](http://www.law.cornell.edu/supct/cgi/get-us-cite?320%20772)); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

**(b) *Where no permission to leave premises.*** It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

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## **2. Scheduling, Premium Pay, and Unexpected Workhour Liability**

### **A. Introduction**

Scheduling employees is an operational function that is based on workload projection and service commitments. Supervisors schedule employees in a process that factors:

- 1) Those actions necessary to meet service standard commitments.
- 2) Scheduling and assigning employees to achieve desired productivity rates, within budgetary constraints.

Compensation rules contained in the National Agreements with labor organizations and the Fair Labor Standards Act (FLSA) often require that the Postal Service pay employees more than a flat hourly rate. As a result, the traditional concern of reducing planned and authorized workhours must be augmented and complemented by an increased concern for minimizing premium pay hours (e.g., night differential, Sunday, holiday, out-of-schedule), guaranteed hours, and unauthorized overtime hours.

FLSA nonexempt employees must be paid for all time that they work, whether or not the work is authorized. It is the responsibility of the supervisor to minimize the occurrence of these unauthorized workhours and to minimize (consistent with operational requirements) the use of premium pay hours.

## 8. Nonbargaining Unit Employees

This chapter contains pay regulations that apply to nonbargaining unit employees in Rate Schedule Codes (RSC) E and F. For pay purposes, nonbargaining unit employees are classified as either FLSA exempt or FLSA nonexempt. Headquarters Employee Resource Management determines the FLSA exempt or nonexempt status of all employees in the Postal Service.

### A. Employee Classification

**FLSA Exempt Employees** — The FLSA provides that employees who occupy administrative, executive, or professional positions, as these terms are defined by the Department of Labor, need not be covered by the overtime provisions of the Act. Employees who are classified as exempt are considered to be salaried employees. As such, they are paid for performing the requirements of their position, regardless of the exact number of hours worked. Exempt employees are not eligible for overtime pay.

The Postal Service divides exempt employees into two types:

- 1) *Regular exempt* employees do not work on an hourly basis and are paid a fixed weekly salary of 40 hours. Regular exempt employees do not receive overtime pay or any additional compensation for working more than 40 hours in a week (except for specific exceptions during the designated Christmas period).
- 2) *Special exempt* employees are employees in positions EAS-18 and below whose primary responsibility is the supervision of bargaining

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unit employees in a production operation. Special exempt employees do not receive overtime pay, but are eligible for additional straight-time pay for hours that they work in addition to their normal schedule when they are authorized to work in excess of 8.5 hours on a scheduled day or any time on a nonscheduled day. Most frontline supervisory positions (e.g., Supervisor, Customer Services; Supervisor, Distribution Operations, etc.) are classified as special exempt.

**FLSA Nonexempt Employees** — Nonexempt employees are paid on an hourly basis and are entitled to overtime pay when they work more than 40 hours in their normal workweek, or when they work a scheduled day off and their total paid hours for the week exceed 40 hours. Nonexempt, nonbargaining employees are also eligible for additional straight-time pay for any hours worked outside of their normal schedule that do not qualify for overtime pay.

#### **B. Overtime and Additional Straight-Time Pay**

Nonbargaining unit employees who work on a nonscheduled day, in excess of 8 hours in a day, or in excess of 40 hours in a week, may be eligible for overtime pay or additional straight-time pay. The payment of overtime or additional pay is determined by the rules that apply to each FLSA employee category.

Nonbargaining unit employees are not eligible for penalty overtime.

**1) FLSA Exempt Employees**

**a. Regular Exempt**

- (1) **Postal Overtime** — Regular exempt employees are not eligible for postal overtime pay.
- (2) **FLSA Overtime** — Regular exempt employees are not eligible for FLSA overtime pay.
- (3) **Additional Pay** — Regular exempt employees are not eligible for additional straight-time pay, except for the following situation:

During the designated Christmas period, a regular exempt employee in an EAS-23 or below position is eligible for additional pay for hours worked outside of his or her normal schedule, provided he or she is authorized to work over 8.5 hours on a scheduled day or any hours on a nonscheduled day *and* the additional hours are spent supervising bargaining unit employees in the mail processing or delivery functions. Except in unusual circumstances, this exception is limited to the following positions:

- Manager, Distribution Operations.
- Manager, Processing and Distribution.
- Manager, Customer Services.

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**b. *Special Exempt***

- (1) **Postal Overtime** — Special exempt employees are not eligible for postal overtime pay.
- (2) **FLSA Overtime** — Special exempt employees are not eligible for FLSA overtime pay.
- (3) **Additional Pay** — Special exempt employees are eligible for additional straight-time pay for hours worked outside of their normal schedule, provided they are authorized to work over 8.5 hours on a scheduled day or any hours on a nonscheduled day.

**2) FLSA Nonexempt Employees**

**a. Postal Overtime** — Nonexempt, nonbargaining employees, except postmasters and OICs, are eligible for postal overtime pay under the following circumstance:

- If the employee works one or more nonscheduled days, all paid hours (work plus paid leave) in excess of 40 for the week, up to the amount of hours worked on nonscheduled days, are paid as overtime.

Postmasters and OICs are not eligible for postal overtime, except in the following two cases:

- Those who are full-time and nonexempt are eligible for postal overtime when they work a sixth day because relief is not available. (See ELM 432.34.)

- A – E postmasters are eligible for postal overtime for actual workhours in excess of 40 paid hours in a service week.
- b. **FLSA Overtime** — Nonexempt employees are eligible for FLSA overtime pay when their total actual workhours exceed 40 in a FLSA workweek.
- c. **Additional Pay** — Nonexempt employees are eligible for additional straight-time pay for hours worked outside of their normal schedule if those hours do not qualify for postal overtime or FLSA overtime as described earlier.
- d. **Calculating Overtime and Straight-Time Pay**

To determine pay for an EAS nonexempt employee (not including postmasters and OICs):

- (1) **Overtime on nonscheduled days.** (If employee did not work on any nonscheduled days, proceed to Step 2.)

Calculate total number of *paid* hours for the week. (Paid hours include work and paid leave, but not LWOP.)

- (a) If greater than 40, all hours in excess of 40, not to exceed the number of hours worked on nonscheduled days, are paid as overtime.
- (b) If 40 or less, all hours are paid at straight time.

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**(2) Overtime on scheduled days.**

Calculate total number of hours *actually worked* during the employee's normal workweek (not including non-scheduled days).

- (a) If greater than 40, all hours in excess of 40 are paid as overtime.
- (b) If 40 or less, all hours are paid at straight time.



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unit employees in a production operation. Special exempt employees do not receive overtime pay, but are eligible for additional straight-time pay for hours that they work in addition to their normal schedule when they are authorized to work in excess of 8.5 hours on a scheduled day or any time on a nonscheduled day. Most frontline supervisory positions (e.g., Supervisor, Customer Services; Supervisor, Distribution Operations, etc.) are classified as special exempt.

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146.2 **Clock Time Requiring Approval**

146.21 **Approving Clock Rings**

The supervisor is required to approve the clock rings on a daily basis by initialing the INITIALS box on the clock ring side of the time card. All time recorded by clock rings is considered work time unless specifically disallowed by the supervisor. The supervisor may not delegate this function to a timekeeper. Exhibit 146.21 shows a properly approved time card.

Exhibit 146.21

**Supervisor Approval of Clock Rings**

In this example, the supervisor was required to approve the clock rings because the employee had more than 8.08 hours of clock time during the tour. The supervisor's approval was indicated by initialing in the INITIALS box after the timekeeper had totaled the clock time.

TOTALS	1	2	3	4	5	6	7	8	9	10	11	12	13	
	DIS-ALLOWED REASON	LWOP (REASON)	PAID LEAVE			OTHER PREMIUM	NW	OT	CLOCK HOURS	GUAR OT	CLOCK HOURS	DISALLOWED HOURS		WORK HOURS
			CL	SL (SS)	AL (SS)							TT	12(-)	
								8.12			INITIALS AZM	16 <sup>58</sup>	FR	
											8.12	12 <sup>54</sup>	FR	
												12 <sup>04</sup>	FR	
										GUAR TIME		07 <sup>96</sup>	FR	
											INITIALS			

146.22 **Disallowing Time**

In those cases where an employee's clock rings exceed 8.08 hours and the employee was not engaged in work or work-related activities while in the time-over-8 status, supervisors must disallow the time on the clock that was not worked.

146.23 **Examples of Proper Disallowance of Time**

Examples of time that may be properly disallowed include, but are not limited to:

- a. *Washup time* — Time spent by an employee changing clothes and/or washing up after his or her tour ends that exceeds the time allotted for such purposes in applicable collective bargaining agreements.
- b. *Waiting time* — Time spent by an employee while waiting to start work at the beginning of a tour when the employee was not instructed or otherwise required to wait.



**432.711 Disallowed Time**

If an employee's clock rings exceed 8.08 hours and the employee was not engaged in work or work-related activities while in the time-over-8 status, supervisors are to disallow the time on the clock that was not worked. In such a case the supervisor should prepare a written entry on PS Form 1017-A, *Time Disallowance Record*, as to the factual basis for his or her knowledge that the employee was not working during the period of time disallowed. Examples of time that may be properly disallowed include, but are not limited to:

- a. *Wash-up time* — time spent by employees changing clothes and/or washing up after their tour ends that exceeds the time allotted for such purposes in applicable collective bargaining agreements.
- b. *Waiting time* — time spent by employees while waiting to start work at the beginning of a tour when they have not been instructed or otherwise required to wait.
- c. *Personal time* — time spent by employees, before their tour begins or after their tour ends, attending to personal matters.
- d. *Mealtime* — time spent by employees "on the clock" during a designated meal period, provided, of course, that the employee was completely relieved of all duties and responsibilities and performed no work during this period.

**432.712 Allowed Time**

Supervisors must credit employees with all time designated as worktime under the Fair Labor Standards Act. Examples of time that must be credited as worktime if the supervisor knows or has reason to believe the activities are being performed during the time, include:

- a. Time spent by employees in performing duties that are part of, or related to, the employees' principal work activity, such as pulling mail from a distribution case, collecting tools or supplies, and adjusting rest bars.
- b. Time spent continuing to work after a tour ends in order to correct an error, to prepare records, or to finish up a task.
- c. Time spent working during meal periods.
- d. Time spent distributing work to work stations.

**432.72 Medical Release Time**

When an employee is released from work and directed by management to an on- or off-site health services unit due to illness or injury, all time spent waiting for and/or receiving medical attention on the service day on which the illness or injury occurs and that would have been worked but for the medical attention, including all time that the employee otherwise would have been directed to work that day beyond his or her regularly scheduled tour, is included and credited as work time.