

Q: Does the FLSA require an employer to recognize bereavement leave as hours worked?

A: No. FLSA does not require an employer to recognize paid bereavement leave as hours worked for purposes of computing overtime.

In general, when someone takes leave (of any kind) those hours are NOT counted as hours worked for purposes of calculating over time liability.

The Fair Labor Standards Act does not require payment for time not worked, including attending a funeral. This type of benefit is generally a matter of agreement between an employer and an employee (or the employee's representative).

The U.S. Department of Labor enforces the Fair Labor Standards Act (**FLSA**). Often the public thinks that the **FLSA** regulates "leave benefits." In fact, there are a number of employment practices related to **leave** that the **FLSA** does not regulate. For example, the **FLSA** does not require pay for time not worked such as vacations, personal time off, **funeral leave**, or jury duty. These types of benefits are generally a matter of agreement between an employer and an employee (or the employee's representative).

For example, FLSA does *not* require:

1. vacation, holiday, severance, or sick pay;
2. meal or rest periods, holidays off, or vacations;
3. premium pay for weekend or holiday work;
4. pay raises or fringe benefits; or
5. a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

Q. Does the FLSA require an employer to recognize hours worked over 8 in a day as overtime?

A: No. Overtime is calculated based on hours in a work period. The Fair Labor Standards Act of 1938 (FLSA) requires employers to compensate nonexempt employees for any hours worked over 40 in one work week at a rate 1.5 times the employee's normal rate of pay.

Note: Some cities may elect to pay OT for hours worked over 8 in one day, however this is NOT a requirement of FLSA.

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, as such. The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

Let me know if you need anything else.

Bonnie Curran
Human Resources Consultant
University of Tennessee, Institute For Public Service
MTAS- Municipal Technical Advisory Service
Web: www.mtas.tennessee.edu
Email: bonnie.curran@tennessee.edu
Office: 615.532.4948
Fax: 615.532.4963