

PRO-301.4 FAIR LABOR STANDARDS ACT ADMINISTRATIVE PROCEDURE

1.0 Purpose.

The purpose of this Administrative Procedure is to implement Section 301.11 of TRWD Board Policy 301 Employment Practices regarding Personnel Classification and Payment of Wages. TRWD complies with the Fair Labor Standards Act (FLSA) which establishes minimum wage, overtime pay, recordkeeping, and youth employment standards.

2.0 Scope.

This FLSA Administrative Procedure applies to all departments, divisions, and offices within TRWD, and to all TRWD employees.

3.0 Personnel Classification.

Each person within TRWD is assigned a position, a personnel status, an overtime status, a benefit status, and upon termination, a termination status. The purpose of this section is to clarify and create a guide to aid in personnel decisions regarding hours of work and benefits for all levels of employment status within TRWD.

Personnel Status

Active. Personnel actively participating in the daily functions of TRWD.

Inactive. Personnel who are not actively working for TRWD.

Overtime Status. TRWD complies with the Department of Labor (DOL) regulations in determining an employee's exemption status.

Nonexempt. A nonexempt employee is paid a specific wage per hour for hours worked and must be paid at least the minimum wage. All employees are considered nonexempt unless a specific exemption applies. The minimum wage and overtime provisions of the FLSA apply to nonexempt employees.

Exempt. An exempt employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. An exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked, unless one of the exemptions outlined below applies. Exempt employees are not required to be paid for any workweek in which they perform no work. The minimum wage and overtime provisions of the FLSA do not apply to an exempt employee.

Deductions from an exempt employee's full salary for any week in which the employee performs work may be made under the following circumstances:

- An exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. If an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. If an exempt employee is absent for one and a half days for personal reasons, TRWD can deduct only for the one full-day absence.

- An exempt employee is absent one or more full days for sickness or disability (including work-related accidents) and the deduction is made in accordance with TRWD's plan, procedure, or practice of providing compensation for loss of salary due to sickness or disability. TRWD is not required to pay any portion of the employee's salary for full-day absences if the employee receives compensation under TRWD's plan, procedure, or practice. TRWD may also make deductions for full-day absences for sickness or disability if the employee has not yet qualified under the plan, procedure, or practice or if the employee has exhausted all leave allowed under TRWD's plan, procedure, or practice.
- An exempt employee is placed on unpaid disciplinary leave or suspension of one or more full days if the discipline is imposed in good faith for infractions of workplace conduct rules set forth in a written Board policy or administrative procedure applicable to all employees.
- An exempt employee is in his or her initial or final week of employment and does not work the full week. TRWD may pay a proportionate part of an employee's full salary for the time actually worked these weeks at the hourly or daily equivalent of the employee's full salary at the time.
- An exempt employee takes unpaid leave under the Family Medical Leave Act ("FMLA"). When an exempt employee takes unpaid leave under the FMLA, TRWD may pay a proportionate part of the full salary for time actually worked.
- TRWD does not make deductions for employee absences due to jury duty, attendance as a witness, or temporary military leave as required by law. TRWD, however, may offset from an employee's salary any amounts received by the employee as military pay for portions of military leave for a particular week against the salary due for that particular week.

Benefit Status

Full Time. Full Time status means employment in an established position requiring 40 hours or more of work per week and determined to be a necessary and integral part of the business of the TRWD on an on-going basis. Full Time status employees are eligible for full participation in all TRWD's benefit programs which include those mandated by law.

Part Time. Part Time status means employment in an established position regularly assigned to work on average less than 30 hours per week. Part Time status employees are not eligible for participation in TRWD's benefit programs. A signed acknowledgement of ineligibility for participation in benefit programs will be required at the onset of employment. Part Time status employees will receive benefits that are mandated by law such as, but not limited to, the FLSA, Federal Withholding, Social Security, Workers' Compensation, the Affordable Care Act, and Unemployment Compensation.

Seasonal. Seasonal status means employment in a position during a specific time of the year depending on the level of work required to meet TRWD's needs. A seasonal employee is typically hired into a position for which the customary annual employment is six months or less. The period of employment should begin each

calendar year in approximately the same part of the year, such as summer or winter. Seasonal employees are non-exempt and not eligible for participation in TRWD's benefit programs. A signed acknowledgement of ineligibility for participation in benefit programs will be required at the onset of employment. Seasonal employees will receive benefits that are mandated by law such as, but not limited to, the FLSA, Federal Withholding, Social Security, Workers' Compensation, the Affordable Care Act, and Unemployment Compensation.

Temporary without health coverage. Employment in a position established for a specific purpose, for a specific period of time, or for the duration of a specific project or group of assignments with a documented history of not maintaining an average of 30 hours per week over a calendar year. Temporary employees are not eligible for participation in TRWD's benefit programs. A signed acknowledgement of ineligibility for participation in benefit programs will be required at the onset of employment. Temporary employees will receive benefits that are mandated by law such as, but not limited to, the FLSA, Federal Withholding, Social Security, Workers' Compensation, the Affordable Care Act, and Unemployment Compensation.

Temporary with health coverage. Employment in a position established for a specific purpose, for a specific period of time, or for the duration of a specific project or group of assignments. Employees with a Temporary Status with Health Coverage have a documented history of working 30 + hours per week or a monthly equivalent of 130 hours, and are offered health insurance coverage as mandated through the Affordable Health Care Act. Temporary employees are only eligible for health care and will not be offered additional TRWD benefits. Temporary employees will receive benefits that are mandated by law such as, but not limited to, the FLSA, Federal Withholding, Social Security, Workers' Compensation, the Affordable Care Act, and Unemployment Compensation.

Active board member. Elected or appointed member to TRWD's Board of Directors who is paid on a per meeting basis, not to exceed the annual limitation mandated by law.

Active contractor. A contract worker is not an employee of the TRWD. A contract worker is a self-employed person who operates his or her own business or is employed through a third party. A contract worker bears responsibility for his or her own taxes and expenses and is not subject to TRWD's direction and control. Contract workers are not paid through TRWD's payroll system and are not eligible for participation in TRWD's benefit programs.

Active nonpaid. A person who voluntarily donates time with no monetary compensation, so long as such services are not the same type of services which the individual is employed to perform for TRWD.

Retired. Employees may be eligible for post-retirement health benefits in accordance with the health care coverages and benefits approved by TRWD's Board of Directors and maintained and updated by the General Manager. Employees and retirees should review the effective Resolution Modifying Health

Care Coverages and Benefits Available to TRWD Retirees to determine eligibility and available benefits.

4.0 Workweek.

For purposes of FLSA compliance, a workweek is a fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods. TRWD's workweek shall begin at 12:00 AM on Monday and end at 11:59 PM the following Sunday.

5.0 Hours Worked.

TRWD must pay nonexempt employees for all hours worked. This generally includes all time a nonexempt employee must be on duty, or on TRWD's premises or at any other prescribed place of work. Hours worked also includes any additional time the employee is allowed (i.e., suffered or permitted) to work. Details of an employee's specific work schedule will be provided by the employee's supervisor.

Waiting time. Whether waiting time is hours worked depends upon the circumstances. When an employee is engaged to wait, such time is considered work time. When an employee is waiting to be engaged, such time is not considered work time.

Breaks. Depending upon the needs of the employee's department, employees may be provided breaks of 15 minutes or less twice a day as approved by the supervisor. TRWD, however, is not obligated to provide these breaks and they may not be given dependent upon department needs. If given, however, these break periods are counted toward hours worked. Any unauthorized extension in breaks is contrary to TRWD's practice, will not be counted toward hours worked, and may be subject to disciplinary consequences.

Meal period. Depending upon the needs of the employee's department, employees may be provided with a meal period each day, such meal period (if provided) being no less than 30 minutes and no longer than one hour. TRWD, however, is not obligated to provide a meal period and they may not be given depending upon department needs. If given, however, meal periods are not counted toward hours worked. During this time, the employee should be completely relieved from duty and not required to perform any job duties. If any employee is required to perform job duties, whether active or inactive, during a meal period, the employee should count the time toward hours worked.

On-call time. Certain employees may be required to be on-call as part of their job duties. There are two kinds of on-call – restrictive and nonrestrictive.

Restrictive on-call. Requires the employee to stay inside his or her home to answer the phone. Restrictive on-call hours are considered hours worked and will be paid at straight time or overtime, whichever is applicable.

Nonrestrictive on-call. When the employee is required to use a pager, radio, cellular phone, or leave a number where they can be reached. Non-restrictive on-call is not considered time worked and will not be compensated, except for the time required to respond to calls or otherwise performing work duties.

Emergencies. If a non-exempt employee is called in on an emergency, and has already worked 40 hours during the workweek, the employee will be paid overtime. If an employee is called in on an emergency in a workweek where there is a holiday and because of the holiday the employee has not worked 40 hours, the employee's supervisor, with approval of the Human Resources Department, may grant overtime for the emergency hours worked.

Home to work travel. Employees who travel from home before the regular workday and return home at the end of the workday are engaged in ordinary home to work travel and the time is not counted toward hours worked.

Travel within workday. Travel by employees as part of their principal activity, such as travel from job site to job site during the workday, is counted toward hours worked.

Days off – TRWD discretion. Hours charged but not worked at the discretion of TRWD (e.g., holidays, floating holidays) will be included as hours worked in calculating the 40-hour workweek.

Days off – employee discretion. Hours charged but not worked at the discretion of the employee (e.g., paid leave) will not be included as hours worked in calculating the 40-hour workweek.

6.0 Preapproval for Hours Worked Outside Normal Schedule.

Any work performed by a nonexempt, hourly employee before or after normal work hours must be preapproved by the employee's supervisor. This includes reading or responding to work-related emails or taking or making work-related calls. Any work performed by nonexempt, hourly employees must be recorded as work time, even if not preapproved by the employee's supervisor. The continued failure to obtain preapproval for work performed outside of the employee's normal schedule, however, may result in disciplinary action.

7.0 Minimum Wage Requirements.

TRWD shall pay each of its nonexempt employees not less than minimum wage for all hours worked.

8.0 Overtime Pay Requirements.

All hours worked in excess of forty (40) in any workweek are overtime hours. Nonexempt employees are eligible for overtime at the rate of one and one-half times the employee's regular rate of pay for those hours required or permitted to be worked in excess of forty (40) hours in any workweek. The overtime requirement may not be waived by agreement between TRWD and its employees.

9.0 Nursing Breaks.

TRWD supports the practice of employees expressing breast milk and will make reasonable accommodations for the needs of all its employees. TRWD will provide an employee with a reasonable break to express breast milk, each time the employee needs to express breast milk for a nursing child, up to one year after the child's birth. TRWD will

provide employees with a place other than a bathroom that is shielded from view and free from intrusion from coworkers and the public.

If a nonexempt employee uses an authorized break time (as allowed for under section *Breaks* of this Administrative Procedure) to express breast milk, such time will be counted toward hours worked. If a nonexempt employee uses time other than an authorized break time and is completely relieved from job duties, such time will not be counted toward hours worked.

10.0 Time Reporting.

All employees must maintain accurate time records of hours worked. Most TRWD employees record time worked through TRWD's time entry system or software application. Hours worked are reported to properly compensate employees in accordance with legal requirements and TRWD's pay policies. Any errors on a timecard should be reported immediately to the employee's supervisor or the Human Resources Department.

11.0 Recordkeeping Requirements.

TRWD shall maintain and preserve the following records for nonexempt employees. The FLSA does not require these records be maintained in any particular form but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned.

- Employee's full name and social security number
- Address, including zip code
- Birth date, if younger than 19
- Sex and occupation
- Time and day of week when employee's workweek begins
- Hours worked each day
- Total hours worked each workweek
- Basis on which employee's wages are paid (e.g., "\$9 per hour," "\$440 a week")
- Regular hourly pay rate
- Total daily or weekly straight-time earnings
- Total overtime earnings for the workweek
- All additions to or deductions from the employee's wages
- Total wages paid each pay period
- Date of payment and the pay period covered by the payment

12.0 Complaints.

Any individual seeking to file a complaint alleging a violation of this Administrative Procedure may do so utilizing TRWD's complaint process established in accordance with Board Policy Section 301.7.6 and *TRWD 301.3 Employee Complaint Administrative Procedure*.