

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

RECEIVED

JUL 29 2024

S.C. SUPREME COURT

WILLIAM M. LUCE, *on behalf of himself and
all similarly situated natural persons,*
Plaintiff,

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vs.

Civil Action No. 3:22-03898-MGL

LEXINGTON COUNTY HEALTH SERVICES
DISTRICT, INC.; BRIAN D. SMITH, *in both
his official and individual capacity;* and LYNN
COGGINS, *in both her official and individual
capacity;*
Defendants.

JOINT MOTION FOR ORDER CERTIFYING QUESTIONS OF LAW
TO THE SOUTH CAROLINA SUPREME COURT

I. INTRODUCTION

Plaintiff, William M. Luce, on behalf of himself and all similarly situated natural persons, and Defendants, Lexington County Health Services District, Inc. (“LCHSD”), Brian D. Smith, and Lynn Coggins (“Defendants”), by and through their undersigned counsel, jointly move the Court pursuant to Rule 244 of the South Carolina Appellate Court Rules to certify a question of law to the South Carolina Supreme Court. The Parties represent that there is no controlling precedent in the decisions of the South Carolina Supreme Court with respect to controlling questions of South Carolina law which may be determinative of this case and, therefore, certification is appropriate.

Specifically, the Parties note the absence of any South Carolina Supreme Court precedent construing the definition of “earnable compensation” in S.C. Code Ann. § 9-1-10(8) or construing the provisions related to the payments not subject to deduction as stated in S.C. Code § 9-1-1020. Because the construction of these South Carolina statutes, as amended, will be determinative of each of the claims Mr. Luce asserts, the Parties respectfully request that this Court certify the

question of whether the wages at issue in this action are subject to deductions for contributions to the South Carolina Retirement System. Accompanying this Motion is a Joint Stipulation of Facts, addressing certain matters that the Parties, following discovery, agree are not in dispute in this action. In further support of their Motion, the Parties state as follows:

II. LEGAL STANDARD

South Carolina Appellate Court Rule 244(a) states, in relevant part:

The Supreme Court in its discretion may answer questions of law certified to it by any federal court of the United States or the highest appellate court or an intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

Rule 244(b) requires the certification order to set forth “the questions of law to be answered, all findings of fact relevant to the questions certified, and a statement showing fully the nature of the controversy in which the questions arose.”

III. NATURE OF THE CONTROVERSY

Plaintiff (“Luce”) initiated this action on behalf of himself and all others similarly situated (the “Putative Class”), by the filing of a Complaint against LCHSD and two (2) of its officers or managers, Brian D. Smith (“Smith”) and Lynn Coggins (“Coggins”) (collectively the “LMC Defendants”). Luce brings four causes of action on behalf of himself and a Putative Class, including claims for declaratory relief under 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, for injunctive relief, a claim under 42 U.S.C. § 1983, and for relief under the South Carolina Payment of Wages Act (“SCPWA”), S.C. Code Ann. § 41-10-10, *et seq.*

This case arises out of Luce’s allegations that the LMC Defendants have an unlawful policy of withholding and diverting certain wages to the South Carolina Public Employee Benefits

Authority (“PEBA”) for use by the South Carolina Retirement System (“SCRS”). SCRS is a defined benefit retirement plan for employees of state agencies and other local subdivisions of government that have joined SCRS. Employers of SCRS members are required to withhold SCRS contributions from those employees’ “earnable compensation[.]” S.C. Code Ann. § 9-1-10(8) (defining “earnable compensation”); *see generally id.* § 9-1-10, *et seq.* (the Retirement Act). PEBA, into which the SCRS was incorporated in 2012, administers SCRS.

As it relates to this Motion, Luce, an LCHSD employee, alleges he has regularly “agreed to work weekends, holidays, night shifts, 24-hour shifts, call, and other undesirable work because [LCHSD] offers and incentivizes Luce and other professionals employed at LMC to do so with the promise of pay in addition to their salary base, e.g., premium pay, call pay, and shift differentials.” [Doc. 24, Amended Complaint ¶ 23.] He claims LCHSD has withheld a percentage of those payments—which he contends do not constitute “earnable compensation”—to divert to PEBA for use by the SCRS. [Amended Complaint ¶¶ 24, 26-27.] Defendants dispute Plaintiff’s allegation that these payments are excluded from “earnable compensation” and assert that they have, at all times, had reasonable grounds for believing their practices complied with applicable law, regulations, and guidance from SCRS and PEBA. [Doc. 28, Answer to Amended Complaint ¶¶ 23-24, 26-27, 98.]

IV. QUESTIONS OF LAW TO BE ANSWERED

S.C. Code § 9-1-1020 provides the statutory mandate for employers to deduct SCRS contributions from members’ earnable compensation. “Earnable compensation” is defined as “the full rate of compensation that would be payable to a member if the member worked the member’s full normal working time; when compensation includes maintenance, fees, and other things of value the board shall fix the value of that part of the compensation not paid in money directly by

the employer.” *Id.* § 9-1-10(8)(a). S.C. Code § 9-1-1020 states: “Payments for unused sick leave, single special payments at retirement, bonus and incentive-type payments, or any other payments not considered a part of the regular salary base are not compensation for which contributions are deductible.”

The merits of Luce’s claims, as well as the claims of any putative class this Court may certify, is dependent on whether earnings such as the Wages in Controversy, as defined in the Parties’ Joint Stipulation of Facts, are subject to mandatory employer deductions under S.C. Code § 9-1-1020. The Parties have not identified any controlling authority construing the above-referenced language in S.C. Code § 9-1-1020. Likewise, the Parties are only aware of two South Carolina controlling authorities discussing the definition of “earnable compensation” under S.C. Code § 9-1-10(8), but neither decision touches upon the issue posed in this action. *See Kennedy v. South Carolina Ret. Sys.*, 549 S.E.2d 243 (S.C. 2001) (construing the 1978 amendment to the SCRS statute and addressing the inclusion of unused annual leave in the average final compensation calculation); *Duvall v. S.C. Budget & Control Bd.*, 659 S.E.2d 125 (S.C. 2008) (construing the 1978, 1986, and 2005 amendments to the SCRS statute and addressing again the inclusion of unused annual leave in the average final compensation calculation).

Accordingly, the Parties respectfully request that this Court certify the following question to the South Carolina Supreme Court:

Are the Wages in Controversy, as defined in the Joint Stipulation of Facts, that Luce and other Putative Class Members earned during employment with LCHSD “earnable compensation” subject to employer deductions under S.C. Code § 9-1-1020?

V. CONCLUSION

For the reasons set forth above, the Parties respectfully request that the Court certify the foregoing question to the South Carolina Supreme Court. If the Court grants this Motion, the

Parties request that the Court forward a copy of its Order to the South Carolina Supreme Court under this Court's official seal, together with the Amended Complaint (Doc. 24), the LMC Defendants' Answer to the Amended Complaint (Doc. 28), the Parties' Joint Stipulation of Facts, attached herewith, and any other portions of the record that the South Carolina Supreme Court may request.

/s/ Shaun C. Blake

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ATTORNEYS FOR DEFENDANTS
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SERVICES DISTRICT, INC., BRIAN D.
SMITH, AND LYNN COGGINS

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

William M. Luce, on behalf of himself and
all similarly situated natural persons,

Plaintiff,

v.

Lexington County Health Services District,
Inc., Brian D. Smith in both his official and
individual capacity, and Lynn Coggins in
both her official and individual capacity,

Defendants.

Case No. 3:22-cv-03898-MGL

JOINT STIPULATION OF FACTS

Pursuant to Fed. R. Civ. P. Rule 16(c)(2)(C), the parties enter into the following joint stipulation of facts reflecting the Parties' agreement that the following facts are not in dispute:

1. Lexington County Health Services District, Inc., doing business as Lexington Medical Center ("LCHSD"), is a regional health services district formed by Lexington County under the authority of S.C. Code § 44-7-2010, and at all times since October 20, 2019, is an "employer" as defined in S.C. Code § 9-1-10(14).

2. Since October 20, 2019, LCHSD has employed Lynn Coggins ("Coggins") as its Accounting Manager and Brian D. Smith ("Smith") as its Vice President of Human Resources or Senior Vice President of Human Resources.

3. LCHSD employed William M. Luce ("Luce") as a Certified Registered Nurse Anesthetist ("CRNA"), as defined in S.C. Code § 40-33-20(19), from October 20, 2019, to June 23, 2023 (the "Relevant Employment Period").

4. At all times during Luce's Relevant Employment Period, LCHSD had a written Salaried Exempt Employees policy and procedure, which is attached hereto as Exhibit A. Pursuant to that policy, LCHSD classified Luce as an exempt employee pursuant to the Fair Labor Standards

Act of 1938, 29 U.S.C. § 201, *et seq.* as amended (“FLSA”). As such, Luce was not eligible for overtime compensation at any time during Luce’s Relevant Employment Period.

5. At all times during Luce’s Relevant Employment Period, LCHSD paid Luce wages on a biweekly basis and delivered a paystub to him reflecting his earnings and deductions. Copies of Luce’s final pay stubs for years 2019-2022 are attached hereto as Exhibit B.¹

6. At all times during Luce’s Relevant Employment Period, LCHSD had a written Wage and Salary Administration policy and procedure, which is attached hereto as Exhibit C. Pursuant to that policy, each job-code is assigned a salary range, which applies to all positions classified therein. Upon his hiring, LCHSD set Luce’s salary within the range established for CRNAs. LCHSD labeled Luce’s salary on Luce’s paystubs issued during Luce’s Relevant Employment Period as his “Regular Base Pay.”

7. As of October 20, 2019, LCHSD set Luce’s salary at \$8,319.00 per biweekly pay period. Beginning on May 15, 2022, LCHSD increased Luce’s salary to \$8,480.00 per biweekly pay period and it remained at this salary level through the end of his employment with LCHSD.

8. At all times during Luce’s Relevant Employment Period and pursuant to LCHSD’s Wage and Salary Administration policy and procedure and Hours of Work policy, which is attached hereto as Exhibit D, Luce earned wages in addition to his biweekly salary when he worked on certain shifts – including nights, weekends, holidays, or 24-hour shifts – or worked additional shifts beyond his regularly scheduled shifts in a biweekly pay period, or if he was on call, or if he was called back to LCHSD’s premises to continue to work after a scheduled shift. Specifically,

¹ Plaintiff’s paystubs have been designated confidential pursuant to the Confidentiality Order entered on February 9, 2024. Doc. 50.

during Luce's Relevant Employment Period, Luce agreed to work and worked these certain shifts and earned the following wages in addition to his salary (the "Wages in Controversy"):

- a. Shift Differential: an additional amount of wages that LCHSD pays certain employees for the time spent working outside of the time of day that LCHSD classifies as "day shift." LCHSD described this pay category on Luce's paystubs as "CRNA PM Shift Diff". At all times during Luce's Relevant Employment Period, Luce earned an additional \$5.00 per hour when he worked at least 5 hours after 3:00 p.m. for LCHSD.
- b. Weekend Differential: an additional amount of wages that LCHSD pays certain employees for the time spent working during the portion of the work week that LCHSD classifies as the weekend. LCHSD described this pay category on Luce's paystubs as "CRNA Weekend Diff". At all times during Luce's Relevant Employment Period, Luce earned an additional \$10.00 per hour he worked for LCHSD between the hours of 7:00 a.m. on Saturday and 7:00 a.m. on Monday.
- c. Holiday Differential: an additional amount of wages that LCHSD pays for a CRNA working either New Years Day, Thanksgiving Day, or Christmas Day. LCHSD described this pay category on Luce's paystubs as "CRNA Holiday Differential". At all times during Luce's Relevant Employment Period, Luce earned an additional \$10.00 per hour he worked on either New Years Day, Thanksgiving Day, or Christmas Day for LCHSD.
- d. On-call: an additional amount of wages LCHSD pays for being available while off LCHSD premises, to return to work in appropriate dress and in condition to work within a reasonable length of time (as determined by the department manager) if

called. LCHSD's written policy states: "On-call hours do not constitute working time and will not be used in computing overtime payments." LCHSD described this pay category on Luce's paystubs as "CRNA On Call". At all times during Luce's Relevant Employment Period, Luce earned \$20.00 per hour that he was on call for LCHSD.

- e. Call Back Pay: an additional amount of wages LCHSD pays when an employee is called back to work, e.g., in case of a disaster alert. LCHSD described this pay category on Luce's paystubs as "CRNA Call Back". At all times during Luce's Relevant Employment Period, Luce earned \$130 per hour that he worked after being called back following the end of his shift.
- f. Premium Pay: an additional amount of wages that LCHSD pays for a CRNA working additional shifts beyond the employee's normally scheduled. LCHSD described this pay category on Luce's paystubs as "CRNA Premium Pay". During Luce's Relevant Employment Period, Luce earned between \$130 per hour to \$175 per hour for Premium Pay.

9. The South Carolina Retirement System ("SCRS") is a defined benefit pension plan, which promises members a set benefit at retirement that is determined on either the twelve (12) highest or twenty (20) highest consecutive quarters of earnable compensation and that is dependent on an application and the employee's satisfaction of eligibility thresholds, e.g. age, years of service within State employment, and mortality.

10. Luce retired, as defined in S.C. Code § 9-1-10(26), on or around April 3, 2011, and at all times during Luce's Relevant Employment Period, he was a retired member of SCRS.

11. On each occasion that LCHSD paid Luce wages on or after November 4, 2019, LCHSD withheld 9% of Luce's Regular Base Pay and delivered these sums to the South Carolina Public Employee Benefits Authority ("PEBA") for use by the SCRS pursuant to S.C. Code §§ 9-1-1020 and 9-1-1085. Pursuant to S.C. Code § 9-1-1790(C), as a "retired member" of SCRS, Luce was required to "pay to the system the employee contribution as if [he] were an active contributing member," but Luce did "not accrue additional service credit in the system by reason of the contributions required."

12. Additionally, on each occasion during Luce's Relevant Employment Period that Luce earned the Wages in Controversy, LCHSD withheld 9% of Luce's Wages in Controversy and delivered these sums to PEBA for use by the SCRS.

13. Beginning in April 2022, Luce communicated with LCHSD employees in the payroll department and disputed LCHSD's practice of withholding and contributing to SCRS 9% of the Wages in Controversy.

14. In May 2022, Luce communicated with Coggins regarding LCHSD's practice of withholding and contributing to SCRS 9% of the Wages in Controversy.

15. In August 2022, Luce emailed LCHSD's Vice President of Operations and asked to discuss the changes to SCRS contributions made in Act 278, effective December 31, 2012. Luce was directed to Smith.

16. Luce discussed LCHSD's practice of withholding and contributing to SCRS 9% of the Wages in Controversy with Smith in August and September 2022.

17. LCHSD continued its practice of withholding and contributing to SCRS 9% of Luce's Wages in Controversy through Luce's resignation of his employment with LCHSD effective June 23, 2023. LCHSD continues this practice for CRNAs and certain other employees

to date. LCHSD has not delivered to Luce the contributions directed to Luce's account at SCRS that LCHSD withheld from Luce's Wages in Controversy.

/s/ Shaun C. Blake

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ATTORNEYS FOR DEFENDANTS
LEXINGTON COUNTY HEALTH
SERVICES DISTRICT, INC., BRIAN D.
SMITH, AND LYNN COGGINS

Lexington Medical Center IRMO AMBULATORY SURGERY CENTER LEXINGTON AMBULATORY SURGERY CENTER NORTHEAST AMBULATORY SURGERY CENTER WEST COLUMBIA AMBULATORY SURGERY CENTER	
Salaried Exempt Employees policy and procedure	
Created By:: Zeches, Cheryl(Senior Executive Assistant)	Original Document Upload:: 02/01/2018
	Current Revision:: 3.00
	Last Approved Time:: 03/12/2024
	Printed copy valid only date printed

**LEXINGTON MEDICAL CENTER
 POLICY AND PROCEDURES
 HUMAN RESOURCES**

SUBJECT:	Salaried/Exempt Employees		
EFFECTIVE DATE:	10/01/84	HR NUMBER:	XXXX
REVISED DATE:	09/01/04, 3/2/18, 12/1/22	REVIEWED DATE:	2/1/24

THIS POLICY DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND LEXINGTON MEDICAL CENTER. LEXINGTON MEDICAL CENTER (LMC) RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY, IN WHOLE OR IN PART, AT ANY TIME.

I. Need for Policy

A. An employee may be classified as a salaried exempt employee provided the employee meets “exempt requirements” under the Fair Labor Standards Act, and regularly receives each pay period a predetermined bi-weekly amount.

II. Determination of Status

- A. LMC Human Resources will conduct periodic reviews to ensure that jobs are classified according to federal law.
- B. Department directors will forward requests to Human Resources for determination.
- C. A Compensation representative will make a determination regarding the employee’s exempt status.

III. Deductions

- A. A deduction refers to any reduction in regular biweekly earnings.
- B. Deductions may not be made for absences caused by the operating requirements of the hospital unless an employee is on budget-required furlough.

SUBJECT:

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C. Deductions may be made for absences, illness and personal reasons after paid time off is exhausted.

D. Deductions should normally be made in whole day increments with the exception of intermittent FMLA usage which may be deducted in increments of no less than 1 hour.

E. Deductions may be made for some disciplinary reasons such as unpaid suspensions, and infractions of safety rules of a major significance.

F. Unpaid leaves of absence will be handled on a case-by-case basis and must be approved by the SVPHR.

IV. Compensatory Time

A. Salaried employees are expected to complete job assignments regardless of time requirements. No salaried employees are eligible for compensatory time.


B. Salaried employees are not eligible for overtime compensation.

Brian Smith
Senior Vice President Human Resources

Tod Augsburger
President and Chief Executive Officer

Exhibit B

Plaintiff's paystubs containing confidential information.
(CONFIDENTIAL)

 Lexington Medical Center IRMO AMBULATORY SURGERY CENTER LEXINGTON AMBULATORY SURGERY CENTER NORTHEAST AMBULATORY SURGERY CENTER WEST COLUMBIA AMBULATORY SURGERY CENTER	
Wage and Salary Administration policy and procedure	
Created By:: Zeches, Cheryl(Executive Assistant)	Original Document Upload:: 02/01/2018
	Current Revision:: 3.00
	Last Approved Time:: 03/12/2024
	Printed copy valid only date printed

**LEXINGTON MEDICAL CENTER
 POLICY AND PROCEDURES
 HUMAN RESOURCES**

SUBJECT:	Wage and Salary Administration		
EFFECTIVE DATE:	01/01/84	HR NUMBER:	XXXX
REVISED DATE:	0/2/6/18, 12/1/22	REVIEWED DATE:	2/1/24

THIS POLICY DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND LEXINGTON MEDICAL CENTER. LEXINGTON MEDICAL CENTER (LMC) RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY, IN WHOLE OR IN PART, AT ANY TIME.

I. Need for Policy

- A. To provide guidance regarding compliance with maintaining wage and salary rates that are applicable with local, regional, or national labor markets.

II. Definitions

- A. Essential job functions – the primary responsibilities and scope of the job. The reason the job exists.
- B. Promotion – employee changes jobs from one grade value to a higher-grade value.
- C. Demotion – employee changes jobs from one grade value to a lower grade value.
- D. Lateral - employee changes to a job that has the same or similar grade value.
- E. Reclassification – When a position’s functions, duties, scope, requirements, and/or qualifications have changed to the point where a different job classification seems to more accurately describe the position, an evaluation of the position may be warranted to see if a different job classification is appropriate. Depending on the nature of the changes, a new job classification may be assigned, which may be in the same grade or a different grade. Positions will not be reclassified for the purpose of rewarding employees for performance or to correct perceived salary inequities

III. Statement of Policy

SUBJECT: Wage and Salary Administration

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- A. Through application of a comprehensive compensation program, LMC's goal is to provide competitive pay in relationship to duties, responsibilities and job performance and in accordance with all wage payment laws. Further, it is LMC's policy that its salary administration practices, and compensation levels be competitive with those in like organizations for comparable job categories.
- B. Our goal is to compensate timely and accurately. If at any time an employee feels that there is an error in the way they have been paid, they are to contact their department director or Human Resources immediately.

IV. Procedures

A. Classification of Positions

- 1. A system of job description and evaluation is used to review, measure, and classify positions in terms of requirements and relative internal importance. At the same time, establish the position's relationship to other positions in the organization and determine the proper pay group within the pay structure.
 - a. Classifications in the organization must be supported by a job description giving, in detail, the qualifications, duties, responsibilities, position characteristics, and physical requirements of position. Indication on the percentage of time spent on essential job functions is advised.
 - b. The Department director will forward the job description to Compensation along with a business case for new or modified job descriptions if requesting a grade reevaluation. The SVPHR will be responsible for approving all new or upgraded job descriptions.
 - c. Positions with similar duties and responsibilities may be grouped together into the same classification and given the same title or similar title.
 - d. Compensation assigns a pay grade and salary range to each position.
 - e. Only positions appearing in the approved department budget are authorized for use.
 - f. It is important that the job and not the individual be described and evaluated.

B. Changes in Classification

- 1. Up-to-date job descriptions and are to be maintained for all positions.
 - a. All job descriptions are to be reviewed periodically by the vice president or department director to assure accuracy and consistency.
 - b. Employees whose duties and responsibilities have significantly changed may request that their department director consider updating the job description. If the department director agrees, they can request a review by Compensation to

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determine whether it should be re-evaluated. Either the department director or Assistant Director – HR Business Partner may refer the job description for review.

- c. Changes in job descriptions that result in no change in classification will be reviewed by the Assistant Director – HR Business Partner and/or Compensation.
- d. All job descriptions are evaluated according to the primary or regularly assigned duties of the employee. The assignment to a pay group will not be determined on the basis of infrequent or occasional duties.
- e. If a reclassification results from the review of a job description, the effective date normally shall be the first day of the pay period following the review or reclassification approval.
- f. New job codes will be assigned by Compensation, if needed.

C. Job Evaluation Process

- 1. Before a job is evaluated or reviewed it is the responsibility of the department director to have their VP approve the initiation of the job evaluation process. A business case outlining the reason for the request should accompany the request.
- 2. Jobs will be reviewed based on internal equity and external competitiveness. A recommendation will be issued by Compensation, reviewed with the department director, and approved by the SVPHR, VP, Senior VP, and or CEO. Appeals by the department director should be made within 30 days to the SVPHR.
- 3. New positions or those changed because of reorganization should be reviewed for classification, title, and pay range before employees may be hired or their classification changed.
- 4. Compensation may establish individual job titles.
- 5. The assigned title of a position is to be used on all records as the official title although there may be a separate badge title. Separate badge titles may vary by position but must be approved by department director and HR.
- 6. The job description should be reviewed with the employee at hire and at any time there is a change.

D. Wage and Salary Structure

- 1. Job rates and salary ranges may be based on local, regional, or national surveys and internal equity practices.

SUBJECT: Wage and Salary Administration

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- a. HR has the responsibility for administering the wage and salary program in a consistent and efficient manner.
- b. Salary ranges may be reviewed periodically or upon request to Compensation under special conditions, such as changes in market wage rates.
 - i. When increases are awarded as a result of a range adjustment, adjusted base rates will normally not fall below the minimum of the range and should not be increased beyond the maximum of the new range.

E. Determination of Individual Rates and Salaries

1. Establishing base rate:

- a. Each job-code is assigned a salary range.
- b. The salary ranges for any job-code applies to all positions classified therein unless specifically defined. Example: the position has a flat rate established for a PRN positions. The actual flat rate may be outside of the range but the value of the job is the same as the regular position.
- c. New inexperienced employees are normally hired at the minimum rate provided they meet the minimum requirements of the job.
 - i. Those employees who exceed the minimum requirements may be hired based upon their level of recent experience. Starting rates above the third quartile must be approved by Compensation.
- d. HR will coordinate employment offers and the determination of appropriate position in the range with the hiring supervisor/manager.
- e. The department director, or designee, makes the hiring decision and conveys their intent to the HR representative.
- f. The HR representative communicates the official offer and all initial employment conditions to the candidate. This may be accomplished jointly with the department designee upon request.

2. Merit Increases

- a. Each employee's performance is normally reviewed continuously on an informal basis and formally once a year, typically at the end of the fiscal year.
- b. Merit increases may be awarded in accordance with the employee's performance and will typically become effective the pay period following the beginning of the fiscal year. The range of percentage increase awarded for merits will be determined by Administration each fiscal year, however while an evaluation should be given, an annual merit increase is not guaranteed.

SUBJECT: Wage and Salary Administration

HR NUMBER: XXXX

- c. Employees whose rates of pay are below the maximum of their respective pay ranges may receive a merit increase. Merit increases may be awarded to employees until they reach the maximum of their respective pay ranges. The remainder of their merit increase may be awarded in one lump sum.
 - i. Some employees may not be eligible for a merit increase due to their position. Example: Employees who are in positions that compensate at a flat rate of pay at the time of the merit effective date will not be eligible for an increase or a lump sum merit.
 - ii. PRN and on-call only employees will not automatically be eligible for the merit program but will normally be evaluated annually for competencies.
 - iii. Employees on a leave of absence may have their merit withheld until they have returned to an active status.
 - d. Employees whose rates of pay equal or exceed the maximum of their pay ranges may be eligible for increases as follows:
 - i. Merit increases may be awarded in accordance with their performance but will not be added to their hourly rate of pay. Merit increases will be paid in one (1) lump sum installment (minus deductions). The lump sum will be direct deposited into the employee's account. The lump sum payment will typically be given the pay period following the beginning of the fiscal year as determined by the organization.
 - ii. Employees that are PRN at the time of the merit effective date and are at the maximum of their pay range are not eligible to receive a lump sum installment.
3. Transfers
- a. Promotions
 - i. Employees are promoted on the basis of suitability for the position and organizational needs. Promotional increases will typically be effective the pay period the promotion takes effect.
 - ii. Employees promoted to a new position may receive a promotional increase or the appropriate position in the range, whichever is appropriate.
 - Not all promotions result in an increase in pay. Example: an employee with five (5) years of experience may transfer to a higher grade in which they only meet the minimum qualifications.

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- iii. Employees are normally on probation for ninety (90) days, unless the time period is extended due to performance.
 - iv. Employees in positions which are re-evaluated to a higher pay grade may receive no increase or could be placed at the appropriate position in the range.
- b. Lateral Moves
- i. Employees requesting and obtaining a lateral transfer normally retain their current rate of pay or if that rate would be inconsistent with the internal equity in the new department, the department director and HR may offer a lower rate.
 - ii. All pay changes are effective the beginning of the pay period following the employee's change of status.
 - iii. Employees are normally on probation for ninety (90) days, unless the time period is extended due to performance.
 - iv. A change in hours or shift in the same department does not require a new probationary period.
- c. Transfer to Lower Classification
- i. Employees demoted or transferring to a lower pay grade may have their pay decreased.
 - If previously promoted and subsequently demoted into a position, the promotional increase will be rescinded, or
 - May use a combination of rescinding promotional increase and/or percentage, and consideration for years of experience whichever is appropriate.
 - ii. Employees are on probation for ninety (90) days, unless the time period is extended due to performance.
 - iii. If after removing the appropriate amount, the resulting rate of pay would be inconsistent with the internal equity within the new department/position, or over the max of the new range, the department director and HR may offer a lower rate.
 - iv. Demotions as a result of organizational changes are handled on a case-by-case basis.

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- v. Pay changes are typically effective the beginning of the pay period following the employee's change in status.

4. Position Reclassification

- a. Positions which are re-classified to a higher pay grade may receive no increase or could result in an increase or move to an appropriate position in the range.
- b. Positions which are re-classified to a lower pay grade may result in a reduction in an employee's pay, or no change in pay but may freeze the rate if an employee's rate is above the maximum of their new pay grade.

F. Shift Differential is an additional amount of pay added for the working outside of day shift. The amount of the differential is determined by market comparisons and organizational needs and assigned to the job-code. Not all job-codes are eligible for shift differential pay.

- 1. 2nd shift is defined as 3:00 p.m. – 11:00 p.m.
3rd shift is defined as 11:00 p.m. – 7:30 a.m.

- a. The actual hours classified as 2nd or 3rd shift will be determined by the department. Many departments use a variation of twelve (12) hour shifts.

- i. Days 7:00 a.m. – 7:30 p.m.

- ii. Nights 7:00 p.m. - 7:30 a.m.

- 2. Employees scheduled to work either 2nd or 3rd shift may be paid a premium in addition to their regular rate of pay under the following conditions:

- a. Shift differential will be paid for hours actually worked on the appropriate shift. Employees' non-worked hours (paid time off, bereavement leave and any other non worked hours) will not receive shift differential. Professional leave will not receive shift differential. Shift differential is paid as follows:

3rd shift differential: If an employee clocks in between 11:00 p.m. and 4:30 a.m. they will receive 3rd shift differential until 7:30 a.m.

If an employee clocks in before 11:00 p.m. and clocks out after 11:00 p.m., they must work at least three hours past 11:00 p.m. in order to receive 3rd shift differential.

2nd shift differential: Hours worked between 8:00 p.m. and 11:00 p.m. will receive 2nd shift differential.

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If an employee clocks in before 8:00 p.m. in order to receive 2nd shift differential between 3:00 p.m. and 8:00 p.m., they must have five hours worked between 3:00 p.m. and 12:00 midnight.

1st shift: All other hours actually worked will be considered 1st shift for differential purposes.

3. Employees working LexPlan are not eligible to receive shift differentials on the shifts that they receive LexPlan pay.
- G. Weekend Differential is an additional amount of pay added for working weekend shifts. The amount of the differential is determined by market comparisons and organizational needs and assigned to the job-code.
1. The department director and HR will determine which job codes will be eligible for differentials.
 - a. Certain job codes will be excluded from receiving differentials. This will be determined by the department director and HR.
 - b. Employees working LexPlan are not eligible for weekend differential.
 - c. Weekends are defined beginning at 11:30 p.m. Friday and ending 11:30 p.m. Sunday.
- H. LexPlan eligible hours – Certain jobcodes have been approved to receive an additional half time premium for working predominately weekend hours.
1. LexPlan eligible hours are defined as 3:00 p.m. Friday and ending 7:30 a.m. Monday.
 2. LexPlan premium is 50% of the employee's base rate.
 3. LexPlan employees working outside of the defined hours above may be eligible to receive shift differentials but will not receive LexPlan premium.
- I. Overtime – the following applies to all non-exempt LMC employees except for eligible HSD law enforcement officers within the Public Safety department who are covered by a different overtime rules allowed by law. Refer to Law Enforcement Overtime policy.
1. Overtime is paid when a non-exempt employee has worked more than forty (40) hours in a work week. Insofar as is practical, opportunities for overtime will be distributed equitably among employees working in the same classification in the same department and on the same shift where the overtime occurs. Only work time will count toward calculation of overtime. Paid leave does not count as work time for purposes of calculating overtime.
 2. Salaried/exempt employees are not eligible for overtime.

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3. Hours worked over forty (40) are paid at the regular rate plus an additional premium of half (½) of the employee's weighted average hourly rate.
4. All overtime is considered mandatory and will be treated as such for SCRS/PORS plan purposes.

J. Stand-by and On-call Duty

1. "Stand-by" or "On-call" refers to an employee who is required, as a condition of employment, to be available for duty, while outside LMC premises. These employees should be able to return to LMC in appropriate dress and in condition to work within a reasonable length of time (as determined by the department manager) if called.
 - a. Employees on call may not consume any alcohol or any substance legal or illegal that may alter their condition to work.
2. At home on-call refers to any instance where an employee is scheduled to be available from the phone to answer questions or provide support without coming into work.
3. On-call and at home on-call pay is normally compensated at \$2.00 per hour.
4. On-call hours do not constitute working time and will not be used in computing overtime payments.

K. Call-back Pay

1. Call-back time refers to any instance when an employee is called back to work. Except for those employees "On-call" or "Stand-by," this should be accomplished through normal scheduling. Call-back may be utilized in case of a disaster alert.
2. Compensation for non-exempt employees is as follows:
 - a. An employee who is called back to work will receive a minimum of one and one-half (1 1/2) hours pay or actual hours worked whichever is greater.
 - b. Employees called back shall receive their regular rate plus an additional one-half (1/2) times their hourly rate plus appropriate differentials.
 - i. In those cases where call-back results in overtime hours for an hourly employee, the employee will receive overtime compensation instead of not in addition to, the call-back premium.
 - ii. Employees will not be paid "on-call" pay for any hours that they are paid call back pay.
 - iii. Employees will not be compensated for travel time or mileage.

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L. At Home Call Back

1. At home call back refers to any instance where an employee is contacted and able to provide support without having to come back into the workplace.
 - a. Example of this could be patient questions to nurse, Information Services support where the employee is able to connect into the system from an offsite PC, Engineering staff providing guidance to a co-worker.
2. Compensation for non-exempt employees providing support from home without having to come back into the workplace is as follows:
 - a. At home call back will be paid at regular base rate and include appropriate differentials, if applicable.
 - i. In those cases where at home call back results in overtime hours for an hourly employee, the employee will receive overtime compensation instead of, not in addition to, the at home call back.
 - b. Employees will not be paid "at home on-call" pay for any hours that they are paid at home call back pay.

M. Scheduled Available Pay

1. Scheduled available pay refers to any instance where an employee is scheduled to work and due to low acuity or work load, is requested not to report to work at the scheduled time; or is sent home during their scheduled shift but is asked to remain available to return to work during the original scheduled hours. These employees should be able to return to LMC in appropriate dress and in condition to work within a reasonable length of time (as determined by the department manager) if called. Employees on call may not consume any alcohol or any substance legal or illegal that may alter their condition to work.
2. Scheduled available pay is normally compensated at \$2.00 per hour.
 - a. Scheduled available hours do not constitute working time and will not be used in computing overtime payments.
3. Should the workload change during the employee's scheduled shift, the supervisor may request the scheduled available employee to return to work. Upon return to work, scheduled available pay will discontinue and the employee will receive regular pay plus usual differentials for actual worked hours.

N. Secondary Jobs

1. Employees who work in a second job either in their home department or in a different department may receive a different rate of pay that is commensurate with that position's grade and scale, and differentials.

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2. For hourly employees only, the hours worked in the secondary position will be included in overtime calculations.
3. Secondary jobs and the rate of pay must be approved by all departments involved and coordinated with HR.
4. Secondary jobs may be eligible to receive merit increases or adjustments and should be evaluated for competencies.

O. Special Request for Employee Pay Increase

1. All special requests for pay increases must be made and approved prior to informing the employee involved and, if approved, will become effective the beginning of the following pay period.
 - a. Notice of pay increases should be delivered to HR prior to the beginning of the effective pay period.
 - i. The appropriate VP and SVPHR must sign and approve all special pay increases.

V. **Interpretation Contact**

- A. Assistant Director – HR Business Partner
- B. Compensation

VI. **Approvals**

Brian Smith
Senior Vice President, Human Resources

Tod Augsburger
President and Chief Executive Officer

**LEXINGTON MEDICAL CENTER
POLICY AND PROCEDURES
HUMAN RESOURCES**

SUBJECT:	Hours of Work		
EFFECTIVE DATE:	01/01/84	HR NUMBER:	XXXX
REVISED DATE:	09/01/04, 02/01/11, 01/05/15, 1/19/2017, 03/14/19, 10/27/20		REVIEWED DATE: 03/21/22

THIS POLICY DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND LEXINGTON MEDICAL CENTER. LEXINGTON MEDICAL CENTER (LMC) RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY, IN WHOLE OR IN PART, AT ANY TIME.

I. Need for Policy

- A. The purpose of this policy is to define and clarify the normal work week and shift requirements for employees.

II. Definitions

- A. Work Periods – All pay periods begin on Sunday 12:00 a.m. and run two (2) weeks ending on Saturday 11:59 p.m. twenty-six times per year. Thirty (30) minutes of each complete shift, at the convenience of Lexington Medical Center (LMC), may be scheduled as an unpaid meal period.
- B. Work Week – All work weeks begin on Sunday 12:00 a.m. and run seven (7) days ending on Saturday 11:59 p.m. The shift worked falls into the week in which the beginning clock in occurred.
- C. Breaks – A period of time that is granted if the workload and supervisor allow.
- D. Tardy – Reporting to work after the start of an employee’s assigned shift or leaving prior to the end of the scheduled shift. An occurrence is recorded at five (5) minutes late or leaving five (5) minutes early without approval. Failure to clock will also count as a tardy occurrence.
- E. Shift – Scheduled hours of work or regular assigned core work hours as dictated by business needs and managerial oversight.

III. Statement of Policy

- A. Employees are expected to report for work at the time and date as scheduled by their immediate supervisor.
- B. Due to the nature of healthcare operations, employees’ working hours cannot be definitely fixed.
- C. An employee will not normally be required to work more than sixteen (16) hours in one day, but exceptions to this general rule will be made in case of need.

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- D. The typical shift/work hours will be set by each department director.
- E. While an employee may be regularly assigned to a particular position and/or department, each employee is primarily an employee of LMC, and may be temporarily reassigned to where needed on instruction from the supervisor on duty at the time of transfer.
- F. Employees are expected to work the entire shift as scheduled unless the department determines that modifying the shift is appropriate.
- G. Employees who consistently do not work their standard hours may have their budgeted FTE adjusted to meet the average hours worked or may be disciplined for failure to meet expectations.
- H. Employees are expected to use the timekeeping system for all time worked.

IV. Procedures

A. Hours of Work

- 1. The normal work period consists of eighty (80) hours biweekly.
- 2. LMC conducts business twenty-four (24) hours a day seven days a week. Normal hours worked are as follows:
 - a. First Shift - Day shift 8.5 hours (unpaid thirty (30) minute meal break).
 - b. Second Shift - Afternoon/evening shift 8.5 hours (unpaid thirty (30) minute meal break).
 - c. Third Shift - Night shift - 8.5 hours (unpaid thirty (30) minute meal break).
 - d. Flex hours or shorter shifts are available in various departments and will include a thirty (30) minute unpaid meal break if it is five (5) hours or more in length.
 - e. Many departments utilize two (2) 12.5-hour shifts (unpaid thirty (30) minute meal break).
 - f. In the rare instance that an employee works a sixteen (16) hour shift or more, two (2) unpaid thirty (30) minute meal deductions will occur.
- 3. Shift hours are determined by each department director.
- 4. Employees who are required to work through their meal break must be compensated. If an employee is unable to take an uninterrupted thirty (30) minute meal break, he/she is to do one of the following:

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- a. Perform a cancel meal deduction action when clocking out or
 - b. Notify his/her department manager or supervisor to have the meal deduction cancelled.
5. Employees are expected to work their fair share of weekends, holidays, and less desirable hours.
 6. Employees may be reassigned to other areas and their shift hours may vary to meet the LMC's and patients' needs.
 7. Employees are expected to leave LMC premises at the completion of their shift. Loitering around the workplace and surrounding property is prohibited.
 8. From time to time, overtime may be required.
- B. Recording of hours worked (Time and Attendance)
1. All employees will be issued a photo identification badge by the Public Safety Department during their first days of employment. Lost or abused badges will be replaced for a \$10.00 fee. A new badge will be issued free of charge in the event of a name or title change or normal wear and tear. ID badges should be worn at all times when working.
 2. All hourly employees will record their hours of work by "swiping" their identification badges at the clock to which they are assigned at the beginning and end of their shift. Employees may be required to use specific badge readers/clocks to punch in or out or may be required to clock on their computer.
 3. Clocking in or out for another employee will result in disciplinary actions up to and including termination for both employees involved.
 4. Employees forgetting or misplacing their ID badge must report their time to their department's timekeeper for entering into the timekeeping system. A missed clocking is considered a tardy occurrence.
 5. Employees who frequently forget their badge may be sent home and or disciplined up to and including termination.
 6. Employees may not work "off the clock." Employees are to clock in at the start time of their shift and promptly clock out at the end of the shift unless authorized by their immediate supervisor.
 7. Employees clocking in after their assigned shift are considered tardy regardless of the hours they are paid.

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8. Employees leaving the workplace or premises for meals and/or personal business must obtain supervisor permission and clock out upon departure and upon return.
9. Employees may not leave the premises for breaks.
10. Employees are expected to approve their time each pay period and to report inaccuracies to their manager or timekeeper immediately.

C. Overtime

1. Overtime will be paid for all hours worked over forty (40) in a work week.
2. Overtime will be paid according to Fair Labor Standards Act regulations using weighted average of one and one-half of the employee's regular hourly rate including applicable differentials.
3. All overtime must be authorized and approved by the employee's immediate supervisor.
4. Employees are responsible for ensuring that their immediate supervisor approves all overtime.
5. Unauthorized overtime will be paid; however, the employee may be subject to disciplinary action.

D. Breaks

1. When the workload permits, a fifteen (15) minute work break is permitted per shift.
2. The work break is not guaranteed but may be granted on an individual basis at the discretion of the supervisor.
3. Break time may not accumulate from one day to another.
4. Time allowed for a work break is payable but pay will not be made in lieu of break periods.
5. Break time is intended to allow the employee an opportunity to step away from the workload and relieve stress. Employees are encouraged to use their break time for wellness activities such as walking or stair climbing.
6. Due to limited space for our patients and customers, it is recommended employees on break should not lounge, loiter or sleep in space intended for visitors and families, i.e. hospital lobby area and/or family rooms
7. Nursing Mothers:

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- a. Nursing Mothers will be permitted break time(s) to pump while at work.
 - b. A private area (non-bathroom) will be available for use. Department managers will address this on a case by case basis as requested.
 - c. Should the break time(s) for pumping exceed the normal break time allowed, the employee may be asked to clock in and out for the break.
- E. LMC intends to pay employees accurately. If at any time an employee feels that they are not being compensated appropriately or that hours are not reported correctly, the employee should immediately contact their department director or Human Resources.

V. Interpretation Contact

- A. Assistant Director – HR Business Partner

VI. Approvals

Brian Smith
Vice President Human Resources

Tod Augsburgger
President and Chief Executive Officer