

CF OPERATING PROCEDURE
NO. 60-6

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, March 21, 2018

Human Resources

OTHER PERSONAL SERVICES (OPS) EMPLOYMENT

1. Purpose. This operating procedure provides the policies and procedures for the administration of Other Personal Services (OPS) employment in an employer/employee relationship.
2. Scope. This operating procedure applies to all OPS employment in the Department of Children and Families where there is an employee/employer relationship. OPS-independent contractors are individuals engaged by the Department, but not in an employee/employer relationship, and are not governed by this operating procedure.
3. References.
 - a. Section 110.131, Florida Statutes (F.S.).
 - b. Section 216.011(1)(dd), F.S.
 - c. Section 112.3135, F.S.
 - d. Section 60L-32.006, Florida Administrative Code (F.A.C.).
 - e. Section 60L-33.005, F.A.C.
 - f. 29 U.S.C. §201, Fair Labor Standards Act
 - g. CFOP 60-25, Chapter 1, Recruitment and Selection.
 - h. Department of Children and Families Salary Policy.
 - i. State Personnel System OPS Employee Handbook.
4. Definitions. For the purposes of this operating procedure, the following definitions shall be understood to mean:
 - a. Relative. An individual who is related as mother, father, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.
 - b. Other Personal Services (OPS) Employment. OPS employment is a temporary employer/employee relationship used solely for the completion of short-term or intermittent tasks or projects. These employees do not fill authorized established positions or perform the duties of any vacant authorized positions. OPS employees are at-will employees and are subject to personnel actions such as pay changes, changes to work assignments, and terminations at the pleasure of the Department head or designee.

This operating procedure supersedes CFOP 60-6 dated December 1, 2012.

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c. Workweek. Seven (7) consecutive 24 hour periods, beginning at 12:01 a.m., Friday and ending at midnight on the next Thursday.

d. Overtime Work. Hours of work in excess of 40 hours during the established workweek.

e. Board Member. An individual who has been commissioned to serve on any legally constituted board for a Department/agency.

f. Seasonal Employee. An individual who works on a planned and predictable cyclical project or activity for a limited length of time.

g. Temporary Employees. Employees hired for the purpose of accomplishing tasks or projects that are short term in nature.

h. Department. The Department of Children and Families.

i. Hiring Authority. A supervisor or manager with the delegated authority to hire.

j. Volunteer. A person who, of his/her own free will, provides goods or services to an agency with no monetary or material compensation.

5. Other Personal Services Employment.

a. Hiring authorities may request approval of OPS employment to accomplish short term or intermittent tasks or projects.

(1) If there is a comparable job class within the Career Service System, the employee must meet the minimum qualifications for the comparable class.

(2) Sufficient budget must be available.

b. Pursuant to s. 110.131(2), F.S., for each OPS employee, the Department shall:

(1) Maintain employee records identifying, at a minimum, the person employed, the hire date, the type of OPS employment, and the number of hours worked.

(2) Determine the appropriate rate of pay and ensure that all payments are in compliance with the Fair Labor Standards Act (FLSA) and state law.

(3) Review, determine, and document by June 30 of each year whether the continuation of each OPS employment position is necessary to the mission of the Department. This review process does not apply to:

(a) Temporary OPS employees hired to work in an emergency situation that affects the public health, safety, or welfare of Florida's citizens;

(b) Temporary OPS employees hired to work on a project that is identified by a specific appropriation or time limited grant;

(c) Consultants;

(d) Board members;

(e) Seasonal employees;

(f) Institutional clients employed as part of their rehabilitation; or,

(g) Bona-fide degree seeking students in accredited secondary or post secondary educational programs.

(4) Human Resources Classification and Compensation Center of Excellence (COE) will coordinate the annual review with the regions, facilities, and headquarters program offices. A report will be submitted by August 15 each year to the Executive Office of the Governor and to the chairs of the legislative appropriations committees containing total number of OPS employees, the type of employment, average pay, and total number of hours worked for each individual serving in OPS employment for the previous fiscal year ending June 30 in accordance with Section 110.131(4), F.S.

6. Procedures.

a. The hiring authority shall submit a request with required documentation to create an OPS position to the Human Resources Classification and Compensation COE. The hiring authority shall consult with their respective budget liaison to ensure budget availability and to obtain the proper funding code information. Upon review of the request, the COE will assign an OPS position number.

b. Upon receipt of the OPS position number and completion of the selection process, an approved Request for Personnel Action (RPA) (form CF 785, available in DCF Forms) shall be submitted to the Human Resources Service Center with required documentation and justification for the selected applicant.

c. Each hiring authority shall determine the process to be used for the selection of OPS employees. While a competitive selection process is not required, the successful applicant shall have the essential knowledge, skills, and abilities to accomplish the project or task.

d. The hiring authority shall document on the RPA form that the knowledge, skills, and abilities possessed by the successful OPS applicant (excluding clients) directly relates to the work assigned to the position.

e. Reference checks and employee security background checks, including fingerprinting, shall be completed on the successful applicant in accordance with CFOP 60-25, Chapter 1, Recruitment and Selection.

f. If the OPS position is advertised, a selection will not be made prior to the closing date and the selected candidate must meet the qualifications or job requirements included in the job advertisement. The Hiring Authority is responsible for maintaining selection documentation for each selection for a period of four years after the personnel action is effected and any litigation concerning appointment to the position is resolved. The items that are required to document the selection process are outlined within CFOP 60-25, Chapter 1, Recruitment and Selection.

7. Rate of Pay, Terms, and Conditions.

a. Each successful applicant shall be provided information (see Appendix A below) that outlines the terms and conditions of OPS employment. Employees will electronically acknowledge receipt of the information in accordance with the New Employee Orientation Program.

b. Appointments may be made at either an hourly rate of pay up to ten percent (10%) above the minimum of the pay grade for the comparable job class in the Career Service System to which appointed or the employee's currently hourly rate of pay, if presently employed, may be increased up to ten percent (10%) based on the applicant's qualifications and other job-related factors. Any appointments that exceed either option as provided above require submission by the appropriate

Program Director, Regional Director, or Hospital Administrator to the Human Resources Classification and Compensation COE for review and forwarding to the appropriate Assistant Secretary and Deputy Secretary for review and written approval before any offer can be made in accordance with the Department's Salary Policy. OPS employees must be paid at least the federal minimum wage. Institutional clients may be paid at a special rate, which is below statutory minimum wage.

c. OPS employees are paid on an hourly basis for each hour of work performed. OPS employees shall be paid at the rate of one and one-half times the employee's hourly regular rate of pay for overtime work when the position is designated as included or nonexempt under the FLSA. Physicians, attorneys, and certain highly paid computer-related occupations are excluded or exempt from the protections of FLSA, Section 13(a)(1), and are not subject to overtime provisions. Overtime shall not be paid to an OPS employee for any work time of less than 40 hours within the workweek.

d. The hiring authority is responsible for assuring that hours worked are submitted by the OPS employee and approved within the established OPS pay period. OPS employees will not receive payment for time worked in a pay period until hours are submitted and approved by the hiring authority.

e. OPS employees who work 30 hours or more per week on average are eligible to participate in the State Group Insurance Program. Eligible OPS employees may participate in the State Group Insurance Program health and life insurance plans, as well as a variety of supplemental insurance plans, including vision, dental, cancer, intensive care, accident, disability, and hospitalization. OPS employee premium contributions for these plans are deducted on a pre-tax basis. The employee may request deduction on a post-tax basis for health insurance. Additional tax-saving benefits available to OPS employees include the dependent care flexible spending account and health savings account (if enrolled in a high deductible health plan). OPS employees who are expected to work less than 30 hours per week on average, or if found to have worked less than 30 hours per week on average over the 12-month new hire or open enrollment measurement periods, are not eligible for coverage.

f. OPS employees do not accrue annual, compensatory, or sick leave credits and do not receive holiday pay. They are not eligible for administrative leave or participation in the Florida Retirement System.

g. OPS employees are eligible to participate in an agency's recognition and rewards or telework program.

i. OPS employees are required to participate in the State of Florida 401(a) FICA Alternative Plan, which is administered through VALIC, Inc. OPS employees are not subject to Social Security taxes while covered by this plan. OPS employees are exempt from this plan if they are fully eligible for, or have already started receiving, FRS benefits from other covered employment or if they are dually employed in an FRS-covered position.

j. OPS employees may also participate in the Department of Financial Services' Deferred Compensation Plan, which is a voluntary option that helps individuals save and serves as a supplement to retirement income as provided in Section 112.215, F.S.

k. OPS employees do not have retention rights and employment may be terminated at any time. Questions regarding specific actions should be directed to an Employee Relations representative.

l. OPS employees are eligible to participate in the Employee Assistance Program. Questions regarding specific actions should be directed to an Employee Relations representative.

m. OPS employees are eligible to participate in Workers Compensation and Reemployment Assistance (unemployment compensation) programs, unless otherwise exempted by law. Questions regarding specific actions should be directed to a Leave Management representative.

n. No personnel action may be taken that would result in the employment of more than one relative working in the same organizational unit unless such action is approved by the appropriate Program Director, Regional Director, or Hospital Administrator. In accordance with CFOP 60-25, Chapter 1, Recruitment and Selection, no personnel action may be taken that would result in a relative having line authority over another relative.

o. OPS employees are required to comply with the same Standards of Conduct as other Department employees.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

SHELBY JEFFERSON
Acting Human Resources Director

SUMMARY OF REVISED, DELETED OR ADDED MATERIAL

This revision reflects the following changes:

1. Inclusion of the State of Florida 401(a) FICA Alternative Plan which is administered through VALIC, Inc.
2. Updating to reflect new revisions of OPS General Information Sheet from DMS.
3. Health insurance options under Covered Florida no longer available.
4. Inclusion of information that OPS employees are at-will employees and are subject to personnel actions at the pleasure of the Department head or designee.
5. Removed definition for Health Care Practitioner.
6. Removed language regarding contractors and process to request procurement of contracted services prior to hiring an OPS employee.
7. Inclusion of Career Service System as it relates to comparable job class for minimum qualifications and pay purposes.
8. Removed requirement of requesting OPS hours' extensions and included new language of Department requirement to report OPS employment on an annual basis.
9. Revised language to reflect process due to the implementation of Human Resources Service Center.
10. Inclusion of E-Acknowledgement of OPS Information Sheet as part of the New Employee Orientation Program.
11. Inclusion of pay upon appointment rates reflective of the DCF Salary Policy.
12. Removed personnel records information.



OTHER PERSONAL SERVICES (OPS) EMPLOYMENT ACKNOWLEDGEMENT

WHAT IS OPS?

Other Personal Services (OPS) employment is a temporary employer/employee relationship used solely for accomplishing short term or intermittent tasks. OPS employees do not fill established positions and may not be assigned the duties of any vacant authorized position. OPS employees are at-will employees and are subject to actions such as pay changes, changes to work assignments, and terminations at the pleasure of the Department head or designee.

HOW ARE OPS EMPLOYEES TRACKED?

Each OPS employee shall have their name, social security number, employment category, employment start date, number of hours worked, and amount of compensation maintained by the Department in the human resource information system, in accordance with Section 110.131(2)(a), Florida Statutes.

HOW ARE OPS EMPLOYEES PAID?

OPS employees are paid for the actual number of hours they work. All work hours over 40 within a workweek are paid at one and one-half times the employee's hourly rate of pay when the position is designated as "included" or "nonexempt" under the federal Fair Labor Standards Act (FLSA). However, even though physicians, lawyers, teachers, and certain highly paid (minimum \$27.63 per hour) computer-related occupations are paid on an hourly basis, such OPS employees maintain exempt status and are not subject to the FLSA overtime provisions.

WHAT BENEFITS ARE APPLICABLE TO OPS EMPLOYEES?

- State of Florida 401(a) FICA Alternative Plan* – mandatory
- Workers' Compensation – mandatory employer provided coverage
- Reemployment Assistance (Unemployment Compensation) – mandatory
- Deferred Compensation – voluntary
- Employee Assistance Program – voluntary
- Participation in state group insurance – voluntary

*See Page 2 of this information sheet for more information about the FICA Alternative Plan

WHAT BENEFITS ARE NOT APPLICABLE TO OPS EMPLOYEES?

- Any form of paid leave
- Paid holidays
- Participation in the Florida Retirement System
- Reinstatement rights or retention rights

APPLICABLE LAWS/RULES:

- Sections 110.131, 110.1315 and 216.011(1)(dd), Florida Statutes
- Rules 60L-33.005 and 60L-34.001, Florida Administrative Code

STATE OF FLORIDA 401(a) FICA ALTERNATIVE PLAN FOR OTHER PERSONAL SERVICES EMPLOYEES

The State Personnel System sponsors a qualified retirement plan for temporary or seasonal OPS employees, whether full-time or part-time. This is a mandatory plan that meets all federal requirements to be an alternative to Social Security coverage while in OPS employment. Unless the OPS employee meets the criteria for exemption from participation, they will be automatically enrolled upon hire.

HOW DOES THE PLAN WORK?

- OPS employees are not subject to Social Security taxes while covered by this plan. (However, they do participate in Medicare coverage, so they are still subject to Medicare taxes.)
- OPS employees contribute to this plan with pre-tax money. They pay taxes on their contributions or earnings only when they withdraw them.
- OPS employees make contributions to an individual account in their name, which is updated daily. Only they (or their designated beneficiary) can receive distributions from this account.
- If OPS employees leave a position covered by this plan for any reason, they have several distribution options, such as taking a lump sum withdrawal of their account balance (subject to normal taxes and, if applicable, withdrawal penalties); continuing to save the accumulated funds for retirement purposes; or rolling their monies into another qualified tax deferred plan.

HOW IS THE PLAN ADMINISTERED?

- VALIC is the plan administrator and the Department of Financial Services, Office of Deferred Compensation manages the state's contract with VALIC.
- VALIC., uses Diversified Investment Advisors and Variable Annuity Life Insurance Company to provide investment choices which participants control. VALIC will automatically place all contributions in age-appropriate target date funds for participants who decide not to choose their investment funds.
- The [State of Florida FICA Alternative Plan Enrollment Form with Plan Brochure](#) has information on the different investment options that are available and contains the form that participants need to complete in order to designate a beneficiary and choose their investment funds. The beneficiary designation on this form should be completed and returned directly to Bencor, Inc., even if no investment choices are made. The [State of Florida FICA Alternative Plan Enrollment Form with Plan Brochure](#) can also be accessed at:
http://www.dms.myflorida.com/human_resource_support/human_resource_management/other_personal_services_employment_ops
- Bencor, Inc., sends an annual statement for each calendar year the employee is in the plan.
- **Customer Service: VALIC Contact Center, toll-free at 1-800-426-3753.** This phone line is staffed Monday through Friday, from 8:30 a.m. to 5:00 p.m. (EST). Additional account information and online services are available on the VALIC website at VALIC.com/opsfl.

WHO IN OPS EMPLOYMENT IS NOT COVERED (EXEMPTIONS)?

OPS employees are mandatorily exempt from this plan if they are fully eligible for, or have already started receiving, Florida Retirement System (FRS) benefits from other covered employment or if they are dually employed in an FRS-covered position. Such OPS employees will participate in Medicare only, in accordance with federal law.