

03.602 Compensatory Leave and Overtime.

1. Purpose. To insure that staff members are compensated for overtime worked in accordance with the Fair Labor Standards Act of 1938, as amended, and the Texas Government Code.
2. Policy. It is the policy of the University of North Texas System to arrange its work schedules in such a manner that employees are not required to work beyond their normal work schedule. However, when in management's view it becomes necessary for an employee to work overtime, they will be compensated in accordance with the provisions of both the Federal Fair Labor Standards Act (FLSA) and the Texas Government Code.

Departments shall consider methods to reduce or, whenever possible, eliminate the necessity for compensatory time accrual and to provide eligible staff with the opportunity to utilize compensatory time earned. These methods may include allowing the staff to use compensatory time instead of sick or vacation time, flexible scheduling, scheduling compensatory time at slow times, cross training and establishing work pools, using temporary employees or employees from other areas at the university and increasing work productivity through technology or other means. Department supervisors shall work jointly with their staff to explore these and other methods. Department heads shall consult with their area's Vice Chancellor concerning methods considered and provide copies of the methods adopted by the department to all eligible employees.

3. Definition of Terms.

Workweek. The System defines the normal workweek as that period beginning at 12:01 a.m. on Sunday and extending through the seven day period ending at midnight the following Saturday. State law sets the minimum workweek for regular full-time salaried employees at forty (40) hours. (See Office and Working Hours policy.)

Hours Worked. All time spent by a staff member that is primarily for the benefit of the System and that is controlled or directed by the System is considered hours worked. Such time includes required "on duty" time; time which an employee is permitted to work, even if not requested or required; waiting or "idle" time (rest periods, etc.); time spent traveling on official business; time spent in training directed or approved by the supervisor; time spent adjusting grievances; and, time in an on-call status where staff member is restricted to home and the on-call conditions are so restrictive that they cannot pursue personal activities.

Exempt Staff Members. Staff members who meet the FLSA criteria for Executive, Professional or Administrative exemption are exempt from the overtime provisions of the FLSA. All non-classified staff members (except hourly employees) are exempt. Exempt classified staff members are those individuals who are employed in positions that have a classification title coded "E" under the Compensatory/Overtime Status column in Table III of the System Pay Plan.

Non-exempt Staff Members. All staff members who do not meet the FLSA criteria for Executive, Professional or Administrative exemption are non-exempt staff members and are covered by the overtime provision of the FLSA. Non-exempt staff members are those individuals who are employed in positions that have a classification title coded "NE" under the Compensatory/Overtime Status column in Table III of the System Pay Plan.

FLSA Overtime/Compensatory Leave at One and One-half (At 1.5). "Overtime at 1.5" is that time actually worked within the standard workweek that exceeds 40 hours actually worked. Any paid leave or holidays taken are not counted as hours worked in determining overtime at 1.5. Overtime hours at 1.5 are banked as accrued compensatory leave at one and one-half times the number of hours worked. Such compensatory leave may be accrued up to a maximum limit of 240 hours for most non-exempt employees, and up to 480 hours for employees working in public safety, emergency response or seasonal activities. Cash payment is required whenever accrual exceeds the limit on accumulation.

State Overtime/Compensatory Leave at One for One (at 1.0). "Overtime at 1.0" is that time when the employee has not actually worked more than 40 hours in a workweek but the total hours worked and hours of paid leave or paid holidays exceeds 40 hours. Overtime hours worked at 1.0 are banked as compensatory leave at one times the number of hours worked.

No employee, whether or not subject to FLSA, shall accrue state compensatory time for work conducted at any location other than the employee's regular place of employment or assigned duty point. In no event shall an employee's personal residence be deemed to be that employee's regular place of business or duty point for the purpose of this subsection.

NOTE: Non-exempt salaried employees shall be compensated on an hourly basis, at the hourly equivalent of their regular rate of pay, for hours worked at any location other than their regular place of

employment or assigned duty point, in lieu of the accrual of state compensatory time.

Compensatory Leave (Comp Time). Compensatory leave is time off from work, granted because of overtime worked.

Regular Rate of Pay. In compliance with the FLSA and the Texas Government Code, the hourly “regular rate of pay” for a non-exempt employee is calculated by the "weekly" method as defined by FLSA. The System calculates a regular monthly rate, then multiplies the monthly rate by twelve (12) and divides the result by 2080 (52 weeks x 40 hours) to arrive at the regular hourly rate of pay. Night or weekend shift differential and such items as longevity pay, hazardous duty pay, benefit replacement pay, and standby pay or other augmentations, must be considered part of the regular monthly rate for this calculation. The hourly “regular rate” as calculated must never be less than the federal minimum wage.

Overtime Pay. Overtime pay is payment at one and one-half times the employee’s regular rate of pay for all hours worked over 40 in a workweek.

4. Compensation for Overtime – Non-exempt Staff Members Subject to FLSA. A non-exempt staff member is compensated for overtime worked (as described above) in accordance with the Texas Government Code and the Federal Fair Labor Standards Act (FLSA), as amended. Generally, compensation for overtime will be made by requiring the employee to take time off as described below:

- a. Compensation for "Overtime at 1.0".

1. Compensatory leave is granted as equivalent time off (one hour for one hour), which must be taken during the 12-month period following the end of the workweek the overtime was worked. Compensatory time earned at one for one may not be carried forward past the 12-month period (see exception under section 13 below), and generally no cash payments may be made for unused compensatory leave earned at 1.0.
2. In unusual situations when the taking of compensatory time off would be disruptive to normal teaching, research, and other critical functions, non-exempt employees may be paid for compensatory time hours on a straight-time (1.0) basis, with the approval of the Vice Chancellor or Chancellor.

3. A non-exempt staff member must use all accrued compensatory leave earned at 1.0 prior to terminating employment, or in unusual situations as defined above, they may be paid in cash for accrued unused 1.0 compensatory leave.

b. Compensation for "Overtime at 1.5".

1. Compensatory leave is granted as time off at one for one and one-half (1.5), for all compensatory hours under the limits on accumulation. Employees should be scheduled to take time off for accumulated compensatory leave as soon as possible following the end of the workweek the overtime was worked. (See definition of "overtime at 1.5" above.)
 2. When compensatory time off is determined to be impractical and with the approval of the Vice Chancellor or Chancellor, or when the accrued compensatory leave exceeds the limits on accumulation, cash payment shall be made at a rate equal to 1.5 times the staff member's regular rate of pay in effect at the time of payment.
 3. Normally, a staff member must use all accrued compensatory leave earned at 1.5 prior to terminating employment. In unusual circumstances, a staff member may receive a cash payment for such time at termination; however, special calculation may be required, contact Human Resources for assistance.
 4. Exceptions to the workweek overtime calculation for hospital, fire protection, and law enforcement activities shall be made in accordance with the FLSA.
5. Exemptions. The FLSA and Texas Government Code provide that certain executive, administrative, and professional positions shall be exempt from the overtime provisions. Also, "sporadic and occasional" employment situations may be exempt from the overtime rules (see Item 10). Exempt and non-exempt salaried positions are identified in the section of the System Pay Plan titled "Alphabetic Index of Titles". Non-exempt positions are subject to the overtime provisions of the Law.

6. Exempt Staff Members (Not Subject to FLSA) Whose Positions are Only Eligible for TRS Benefits. The System, recognizing that Texas State law provides an option for exempt employees to accrue compensatory time, elects to grant this opportunity to all its full-time, FLSA exempt, employees whose positions are defined as TRS eligible only according to the System Pay Plan (hereinafter such employees are referred to as TRS/exempt staff.)

To facilitate the implementation of this policy, all hours worked by TRS/exempt staff must be documented and accurately recorded, including all hours worked above the normal 40 in the System defined workweek or hours worked in excess of their normal schedule if the employee is part-time. State law limits the actual accrual of compensatory time by TRS/exempt staff to a maximum of one hour of compensatory time for every one hour worked over 40 or the designated work schedule; requires that if utilized, the time must be used within twelve months of accrual; prohibits monetary payments; and provides for loss of remaining compensatory time upon termination of employment. (See exceptions under section 13 below.)

All full-time and part-time TRS/exempt staff at the System accrues at the rate of one-hour compensatory time for each hour worked over 40 hours or the designated work schedule in a workweek. Department heads are encouraged to permit TRS/exempt employees to use accrued compensatory time within the twelve-month period following accrual. Compensatory time not used within twelve months of accrual is lost.

7. Exempt Staff Members (Not Subject to FLSA) and Eligible for ORP Benefits. Exempt staff whose positions are, according to the System Pay Plan, eligible for Optional Retirement, are generally not entitled to earn compensatory time; however, the Chancellor may approve exceptions to allow certain individuals or groups to earn compensatory time.
8. Salary Deductions for Exempt Employees.
 - a. Subject to the exceptions provided below, an employee who is exempt as an executive, professional, or administrative employee under 29 U.S.C. Sec. 213(a)(1) (FLSA) shall receive full salary for any week in which work is performed without regard to the days and number of hours worked. This is also subject to the general rule that an employee need not be paid for any workweek in which the employee performs no work.

1. Deductions may be made when the employee absents himself/herself from work for a full day or more for personal reasons, other than sickness or accident. However, deductions may not be made for absences caused by jury duty, attendance as a witness at a judicial action, temporary military leave, or the operating requirements of the System (i.e. closures due to bad weather or other reason), unless the absence is for a full workweek.
 2. Deductions may also be made for absences of a day or more occasioned by sickness or disability (including workers' compensation accidents) if the deduction is made after exhaustion of paid sick leave or workers' compensation benefits.
 3. Deductions may also be made for penalties imposed for infractions of significant safety rules relating to prevention of serious danger to the workplace or other employees.
- b. Further, in accordance with the special provisions applicable to executive, professional, or administrative employees of public agencies set forth in CFR, Part 541, Section 541.5d, an employee's pay may be reduced for absences for personal reasons or because of illness or injury of less than one work day when accrued leave is not used by the employee because:
1. permission for its use has not been sought or has been sought and denied;
 2. accrued leave has been exhausted, or
 3. the employee chooses to use leave without pay.

In addition, in accordance with Section 541.5d, deductions from the pay of an executive, professional, or administrative employee for absences due to a budget-required furlough shall not disqualify the employee from being paid "on a salary basis" except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced. If deductions have been inadvertently made in contradiction to Department of Labor regulations, reimbursement will be made retroactively to the affected employees.

9. Recordkeeping. The FLSA requires that detailed time records be maintained on all covered non-exempt staff members. Such records must include for each employee the hours worked each workday and total hours worked each workweek (Section 516.2(a)(7), FLSA). The System requires the form UPO-24 Regular Staff Member Time Card to be signed by both the employee and the supervisor. Time clocks may be used in lieu of the UPO-24, but the time clock card must be signed by both employee and the supervisor. Overtime hours banked at 1.5 and at 1.0 (equivalent hours) must be accounted for separately. Also, the date these hours were earned must be maintained. The System requires that form UPO-24 Regular Staff Member Time Card be used for all TRS/exempt employees, to facilitate the documentation of compensatory time accrued.

Each department head is responsible for insuring that such time and attendance records are maintained on all staff members.

Falsification of time records is a major violation of System work rules and could result in disciplinary action including discharge.

10. Approval for Overtime and Compensatory Leave. All overtime and compensatory leave must be approved in advance by the department official who has the designated authority to approve overtime worked or compensatory time off. The System requires the form UPO-15 Staff Application for Approval of Leave/Overtime. An employee who fails to follow departmental directives or policy regarding the approval of overtime and compensatory leave may be subject to disciplinary action including discharge.
11. Multiple Jobs/Dual Employment. Where an employee works two different jobs, such jobs must be aggregated together to determine what overtime over 40 hours is due. The FLSA provides for payment of overtime to a non-exempt employee for all hours exceeding 40 in the workweek. This applies regardless of whether the employment is in more than one department or unit within the System or is for more than one State agency (because all State agencies are considered to be one employer under the FLSA). The State of Texas Comptroller has issued rules for calculating overtime liability in cases of dual employment. Once 40 hours has been exceeded in the workweek, all employers are responsible for compensatory leave accruals and/or overtime payments. It is the responsibility of the employee to inform their supervisor that he/she has another job. It is the responsibility of the department head to see that the employee is compensated for all overtime worked.

However, the 1985 amendments to the FLSA provide some flexibility in handling the dual employment issue when an employee, at his/her option, works on an occasional or sporadic basis in a substantially different capacity from their regular job. The hours worked in the different employment are not to be included in the calculation of the overtime hours. "Occasional and sporadic employment" might typically include officiating at recreational and sports events, selling or taking tickets, food and beverage sales at special events, etc.

12. Use of Compensatory Time Before Lapsing (State Comp Time Only).
If an employee who wishes to use accrued compensatory time that is subject to lapsing submits a written request for permission to use the accrued compensatory time to their department head not later than the 90th day before the date on which the accrued compensatory time will lapse, the department head shall either (1) approve in writing the employee's request; or (2) provide the employee with an alternate date on which the employee may use the compensatory time. The employee may request permission to use the accrued compensatory time within 90 days of the date on which it will lapse, and the department head is encouraged to reasonably accommodate the employee's use of the accrued compensatory time before it lapses.

13. General Administrative Items.
 - a. The System shall notify eligible employees annually of the policy on compensatory time.

 - b. Department heads and supervisors may rearrange a staff member's normal work schedule. Provided the individual does not exceed the total hours of their normal work schedule or does not work more than (40) hours in a workweek, no overtime is worked and no compensatory leave is earned.

 - c. Compensation for hours worked on a designated holiday will be governed by the Holiday Policy. When such hours worked exceed the forty (40) hour workweek, hours in excess of forty will be treated as overtime worked at 1.0 or at 1.5, whichever is applicable.

 - d. The System shall accommodate to the extent practicable an employee's request to use accrued compensatory time. Supervisors should schedule employees to use accrued comp time as soon as possible or within a reasonable period of time after it is earned and within a reasonable time after the employee requests the leave. An employee's use of comp time

should be scheduled so as not to unduly disrupt the operations of the department.

- e. Compensatory leave accruals cannot be transferred from one State agency to another. (Attorney General Opinion No. H-883, September 29, 1976.)
- f. A staff member should use all accrued compensatory leave before transferring from one department in the System to another. Exceptions may be made if the receiving department is willing to accept the transfer of the individual's accrued compensatory leave. A promotion or transfer cannot be denied to an employee solely on the basis of their comp time accrual.

NOTE: If a non-exempt staff member is not able to use all accrued compensatory leave prior to transferring from one System department to another, and the receiving department will not accept the compensatory leave, the releasing department should prepare an Overtime Payment Authorization Form (HRM-10) to pay the employee for the remaining balance. Because overtime is paid at the staff member's regular rate of pay in effect at the time of payment, overtime payments should be processed prior to the completion of the Position/Appointment Authorization Form (HRM-6) transferring the employee to the new position.

- g. Vacation and sick leave credits continue to accrue during compensatory leave.
- h. No FLSA non-exempt employee, whether or not subject to FLSA, may accrue state compensatory time during any week unless the total of paid leave and hours worked exceeds 40 hours. This also applies to part-time non-exempt employees. A part-time non-exempt employee who works beyond their regular scheduled hours, but does not exceed 40 hours in the workweek, must be paid at an hourly rate of pay for the additional work.
- i. When the sum of hours worked plus holiday or other paid leave taken by a part-time TRS exempt employee during a workweek exceeds the number of hours that the part-time employee is designated to work during the workweek, and not otherwise, the employee may be allowed to accrue compensatory time for the number of hours that exceeds the number of hours that the employee is designated to work during the workweek.

REFERENCE:

Fair Labor Standards Act of 1938, as amended.

S.B. 174, 76th Legislature, R.S., Sec. 659.105, Sec. 659.016, Sec. 659.018, Sec. 659.022, and Sec. 659.023, Texas Government Code.

State of Texas Guidelines for Complying the with Supreme Court Decision, in Garcia vs. San Antonio Metropolitan Transit Authority.

Attorney General Opinion No. H-883, September 29, 1976.

Department of Labor Interpretive Bulletin, 29CFR 785.23.