

Overtime

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I. **General Information Regarding Eligibility for Overtime and State Compensatory Time**

- Administrative and Professional employees: not eligible for overtime. They are also not eligible for State Compensatory Time except under special circumstances (see VI. Compensation for Overtime, I.b.)
- Classified, Exempt employees: not eligible for overtime. They are eligible for State Compensatory Time at the rate of one hour for every hour worked over 40 in a workweek.
- Classified, Non-exempt employees: eligible for overtime pay or Overtime State Compensatory Time at the rate of 1.5 hours for every hour worked over 40 in a workweek. Straight State Compensatory Time is available at the rate of one hour for every hour worked over the scheduled work hours up to 40 in a holiday week.
- If you need to know if a job is Administrative and Professional; Classified, Exempt; or Classified, Non-exempt, please send an email to compensation@uta.edu and include the job title.

II. **General Policy**

Section 659.015(b) of the Texas Government Code states: "The employee is entitled to compensation for overtime as provided by federal law and t his section. To the extent

that this section and the federal law prescribe a different rule for the same circumstance, federal law controls with regard to whether this section or federal law prescribes a stricter rule."

It is the policy of The University of Texas at Arlington to organize and schedule its activities in such a manner that an employee shall not be required to work in excess of the established work week, except when occasional operating necessities demand. Prior approval must be obtained from immediate supervisor and/or department head before overtime may be worked. Permitting overtime to be worked is the same as ordering or authorizing it. For example, if you are aware that an employee works through lunch, starts early or stays late, and exceeds 40 hours per week, you are responsible for compensating the employee for that overtime. It shall be the practice of the University whenever possible, to compensate employees for approved overtime services rendered by using compensatory time off. When allowing compensatory time is impractical, the overtime hours will be paid one and one-half times the regular rate of pay.

No employee may accrue state compensatory time for work performed at any location other than the employee's regular place of employment or duty point. For state compensatory time purposes, the employee's personal residence may not be considered to be their regular place of employment or duty point.

Employees shall not be allowed to carry a negative compensatory balance. This would be advancing salary to the employee and this is unconstitutional.

A department head or supervisor may ask for volunteers when over time hours are necessary or require employees to work hour in excess of 40 in a work week or for an extended period of time, including weekends and holidays. An employee who refuses to work the required hours may be subject to disciplinary actions.

III. Definition of Overtime

Overtime is all authorized time worked by an employee that is in excess of forty hours a week. Overtime is computed on actual hours worked and any paid leave time is not counted as hours worked for the purpose of computing overtime.

- **FLSA Overtime:** overtime computed at a rate of one and one-half times for non-exempt employees for any hours in excess of forty hours a week. *Exempt employees may not accrue FLSA overtime.*
- **Non-exempt State Compensatory Time:** time computed at an equivalent rate (one hour off for one hour worked), when an non-exempt employee did not physically work over 40 hours, but total hours in a work week exceeds 40 hours. Example, employee works 35 hours and has an 8 hours holiday "total hours equals 43. Employee earns 3 hours Equivalent time.
- **Exempt State Compensatory Time:** time computed at an equivalent rate for any hours in excess of forty hours a week for exempt employees. *Exempt employees may not be paid for any unused equivalent time from any source of University funds.*

IV. **Definition of Work Time**

All time spent by an employee that is primarily for the benefit of the University and that is controlled or directed by the University. Such time includes required on duty time, time which an employee is permitted to work, even if not requested or required, time spent traveling on official University business, time spent training directed or approved by the supervisor, time spent adjusting grievances and time in an on-call status where employee is restricted to home and the on-call conditions are so restrictive that they cannot pursue personal activities.

V. **Assigned Duty Point for Exempt and Nonexempt Employees**

State law specifically prohibits the accrual of **overtime or state** compensatory time for any state employee at any location other than the employee's regular place of employment or duty point. The provision is contained within the Texas Government Code, Sec. 659.018 as follows:

"Except under circumstance specified in the General Appropriations Act an employee of a state agency as defined by Section 658.001 may not, for hours worked during any calendar week, accumulate compensatory time off under Section 659.015(f) or 659.016 to the extent that the hours are attributable to work performed at a location other than the employee's regular or temporarily assigned place of employment. The employee's personal residence may not be considered the employee's regular or temporarily assigned place of employment."

VI. **Compensation for Overtime**

- A. Prior approval from the employee's department head/supervisor must be obtained by the employee before overtime may be worked.
- B. The department has the option of paying for overtime hours or requiring the employee to take time off at one and one-half times the number of hours worked.
- C. Overtime hours are allowed to be accumulated, within the specified limits in paragraph "d", at one and one-half times the number of hours worked over the forty hour work week.
- D. The accrual limitation for personnel engaged in public safety or emergency response activities is 480 hours; and 240 hours for other categories of employees. (The 480 hour limit represents 320 hours of actual overtime worked times one and one-half, and the 240 hour limit represents 160 hours of actual overtime worked times the one and one-half rate). Such compensatory time off shall be granted at a mutually convenient date anytime during the twelve month

period following the end of the work week in which such compensatory time is accrued.

E. Unused accumulated hours shall be paid to the employee immediately upon the close of the twelve month period following the end of the work week in which time is earned. Once an employee's accrual exceeds the maximum hours of accumulated "comp time", the individual must be paid for each hour over the maximum. Also, unused accumulated hours will be paid to the employee upon termination or to the estate of a deceased employee. The employing department will prepare an electronic voucher, if applicable, or a Payroll Voucher and submit for approval and payment. Payments disbursed to the employees will be charged against the departmental budget.

F. Monetary compensation for overtime shall be charged against the department in the University from which the employee's regular salary was being paid at the time the overtime was worked.

G. **Overtime Rate of Pay**

The regular rate of pay shall include the employee's base salary and longevity pay, hazardous duty pay, and housing emoluments.

H. **State Compensatory Time Equivalent time, also known as state compensatory time, should not be confused with FLSA compensatory time discussed above. Equivalent time is granted on a straight hour-for-hour basis.**

1. The employee's supervisor must authorize in advance, in writing, all state compensatory time to be earned by the employee and the employee's supervisor must also authorize in advance, in writing, all state compensatory time off to be taken by the employee.
2. Equivalent time occurs when an employee's work hours and paid leave or paid holiday exceeds 40 hours in one workweek. In such instances, the employee may be allowed equivalent time off equal to the number of hours in excess of 40.

3. **Use of Equivalent Time**

- a. Equivalent time must be used within 12 months following the end of the work week in which it was earned.
- b. Normally, employees will not be paid for any unused equivalent time, subject to the exceptions provided below.
- c. The interagency transfer of unused equivalent time is not authorized.
- d. Normally, the estate of a deceased employee may not be paid for the employee's earned but unused equivalent time, subject to the exceptions provided below.

4. **Exceptions for Equivalent Time**

Employees of the University may be paid for equivalent time hours on a straight hour-for-hour basis when the taking of such time off would be disruptive to normal teaching, research, and other critical functions, if such payment is authorized by the President or delegate. These employees are excepted from the requirement that all equivalent time must be used within 12 months.

5. Equivalent and compensatory time balances must be recorded separately and should not be combined.
6. State compensatory time records, *Record of FLSA (Overtime) Compensation Time Earned and Taken* ([Form 3-5](#)), must be maintained for a minimum of 48 months and must be readily available for review or for audit within each administrative and professional employee's or exempt classified employee's academic and administrative unit. Departmental written state compensatory time records, *Record of FLSA (Overtime) Compensation Time Earned and Taken* ([Form 3-5](#)), will be subject to audit as a part of the Office of Internal Audit's routine departmental audit procedure.

I. **The Use of Compensatory Time Before Lapsing**

The Texas Government Code, Sec. 659.022, states the following:

1. If an employee of a state agency as defined by Section 658.001 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 the employing state agency not later than the 90th day before the date on which the accrued compensatory time will lapse, the employing state agency shall:
 - a. approve in writing the employee's request; or
 - b. provide the employee with an alternate date on which the employee may use the compensatory time.
2. The employee may request permission to use the accrued compensatory time within 90 days of the date on which it will lapse, and the employing agency is encouraged to reasonably accommodate the employee's use of the accrued compensatory time before it lapses."

J. **Employees Not Subject to FLSA**

An employee who is not subject to the overtime provisions of the FLSA may be allowed compensatory time off for hours in excess of 40 hours in a work week in which the combination of hours worked, paid leave, and holidays exceeds a total of 40 hours.

1. Administrative and Professional (Job Code 10100 - 10999) employees are not subject to the Fair Labor Standards Act (FLSA). Employees appointed to Exempt Classified positions are not subject to the provisions of the Fair Labor Standards Act (FLSA). In the Classified Pay

Plan these positions are identified with the letter "E" in the right-hand column of the Classified Pay Plan, Table 1.

2. Administrative, Professional, and Exempt Classified employees are categories of employees who are exempt from the FLSA overtime provisions and who do not accrue and may not be paid overtime for time worked in excess of 40 hours per week; however, administrative and professional employees and exempt classified employees may earn state compensatory time in accordance with Section 659.016(b) of the Texas Government Code and paragraph 4i of this procedure.

- a. **Exempt Staff Members (Not subject to FLSA) whose positions are classified.**

Exempt staff whose positions are Classified according to the University Pay Plan, are granted compensatory time for hours in excess of 40 hours in a work week in which the combination of hours worked, paid leave, and holidays exceeds a total of 40 hours.

- b. **Exempt Staff Members (Not subject to FLSA) whose positions are Administrative and Professional.**

Exempt staff whose positions are, according to the University Pay Plan, Administrative and Professional, are generally not entitled to earn compensatory time; however, the President may approve exceptions to allow certain individuals or groups to earn compensatory time.

3. An employee who is exempt as an executive, professional, or administrative employee 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.

- a. Deductions may be made when the employee absents himself or 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, or temporary military leave.

- b. 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.

- c. 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.

- d. Executive, professional, or administrative employees' 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

- i. permission for its use has not been sought or has been sought and denied;
 - ii. accrued leave has been exhausted; or
 - iii. the employee chooses to use leave without pay.
 - e. In addition, 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 work week in which the furlough occurs and for which the employee's pay is accordingly reduced.
 - f. If deductions have been inadvertently made in contradiction to Department of Labor regulations, reimbursement will be made retroactively to the affected employees.
4. Employees covered by this subdivision may not be paid for any unused state compensatory time.
 5. No employee, whether or not subject to FLSA, shall accrue state compensatory time during any week unless the combination of paid leave and hours worked exceeds 40 hours.
- K. A nonexempt or qualifying exempt worker will be paid a minimum of two hours for returning to the campus in response to an emergency before or after normally working hours. An emergency is defined as an unscheduled or unforeseen circumstance or the resulting state that requires immediate action. Department heads shall verify that the situation could not wait until scheduled working hours and that an emergency response was necessary. Customarily, the rate will be at one and one-half times the regular rate. If the employee does not work a full forty hours that week, the compensation will be at a straight time rate. When employees return to campus to deal with an emergency situation, compensation time will include the time of travel from and return travel time to the employee's residence.
- L. For compensatory time off to be used instead of payment for overtime the department head/supervisor and the employee must reach an understanding *before* the performance of work. This agreement may be a notice to the employee, which states that compensatory time will be provided in lieu of overtime pay or an expressed condition of employment.
- M. Departments must allow employees to use compensatory time off within a reasonable period after it is requested, if it does not unduly disrupt operations. In determining what constitutes a reasonable period of time, supervisors should consider the normal work schedule, anticipated peak workloads based on past experience, the availability of substitute staff and emergency requirements for staff and services. If the agreement reached between the

supervisor/department head and the employee prior to work performance defines when time off will be taken, then that agreement will govern.

- N. For a supervisor or department head to deny an employee's request to take compensatory time off, it must be determined that such time would impose an unreasonable burden on the department's ability to provide quality services. Mere inconvenience to the supervisor /department would not unduly disrupt the operations.

VII. **Paid Leave/Holidays**

Section 659.016(b), of the Texas Government Code and UTA Procedures contains the following language:

"When the sum of hours worked plus holiday or other paid leave taken by a full-time employee during a workweek exceeds 40 hours, and not otherwise, the employee may be allowed to accrue compensatory time for the number of hours that exceeds 40 hours. When the sum of hours worked plus holiday or other paid leave taken by a part time 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."

Any paid leave or holidays taken are not counted as hours worked in determining overtime hours. In situations in which the employee has not worked more than 40 hours in a work week but the total of hours worked and hours of paid leave or paid holidays exceed 40 hours, the employee will be allowed equivalent (one hour off for one hour worked) state compensatory time off for the excess hours. The state compensatory time also must be taken during the twelve (12) month period following the end of the work week in which time is accrued. Normally, unused equivalent hours will not be paid employees upon termination. As an exception, employees may be paid for compensatory straight time when the taking of such time would be disruptive to normal and critical functions of the department. It will be the responsibility of the supervisor to determine whether such time off would be disruptive to the department. A request for payment must be submitted in writing to the Vice President for Human Resources.

VIII. **Part-time Employment**

An employee may undertake, on an occasional or sporadic basis and solely at his/her own option, part time employment for the University that is a different occupational capacity from any, in which he/she is regularly employed. The hours worked in the occasional/sporadic capacity may be excluded in the calculations of the hours for which the employee is entitled to overtime compensation or overtime compensatory time.

IX. **Volunteers**

Any individual who volunteers to perform services for an institution is not considered an employee if:

- A. Volunteered, and
- B. Such services are not the same type of services which the individual is employed to perform for the University.

Refer to *Volunteer Service* ([Procedure 3-44](#)) for further details.

X. Record Keeping

The University of Texas at Arlington is required by the Fair Labor Standards Act to maintain accurate time and leave records for all non-exempt employees. The responsibility of record keeping is placed upon each department. Overtime hours and straight time hours (equivalent time) must be accounted for separately. The dates the time is earned and used must be maintained since there is a twelve month time limitation for the disposition of both types of hours. Time sheets and the Record of Compensatory Time sheet shall be maintained and preserved in the department. Departmental written compensatory time records, *Record of FLSA (Overtime) Compensation Time Earned and Taken* ([Form 3-5](#)), will be subject to audit as a part of the Office of Internal Audit's routine departmental audit procedure.

To ensure consistent application of institutional policy, all "authorized" overtime and state compensatory time for any University employee must be promptly recorded in writing within the department (usually within five [5] days) during the week following the week in which the compensatory time is earned. Once the employee has recorded the compensatory time, the recording document, *Record of FLSA (Overtime) Compensation Time Earned and Taken* ([Form 3-5](#)), should be immediately presented to the employee's supervisor for approval (signature of the supervisor) and also for maintaining the unit's compensatory time records. These records should also be used to record compensatory time off that is subsequently taken by the employee and approved by the employee's supervisor.

Related Procedures

- *Volunteer Service* ([Procedure 3-44](#))

Related Forms

- *Record of FLSA (Overtime) Compensation Time Earned and Taken* ([Form 3-5](#))