

SYSTEM REGULATION

31.01.09 Overtime

November 27, 2002

Revised December 18, 2005

Supplements System Policy 31.01

1. GENERAL

- 1.1 Under the Fair Labor Standards Act (FLSA), a federal statute, a nonexempt employee must be compensated with either time or pay for working more than 40 hours in a workweek. (See section 3, FLSA Overtime) Under Texas law, a nonexempt employee who has a combination of hours worked, paid leave, compensatory time and paid holidays totaling more than 40 hours in a workweek must receive either time or pay for the additional hours. (See section 4, State Overtime) An exempt employee is not compensated under the federal or state overtime provisions except as described in section 5.
- 1.2 All overtime for a nonexempt employee requires advance authorization. A System component must have procedures for the approval of overtime.
- 1.3 The A&M System awards compensatory time instead of paying for overtime except as permitted in limited circumstances, as detailed in sections 3.2, 4.2, and 5.
- 1.4 A supervisor or manager may adjust a nonexempt employee's work schedule in a workweek so the employee does not work overtime.

2. DEFINITIONS

2.1 Workweek and pay periods

- 2.1.1 A workweek is a fixed and regularly recurring period of seven consecutive 24-hour periods (168 hours). In general, for overtime compensation purposes, each workweek stands alone. The component human resources office should be consulted for allowable exceptions.
- 2.1.2 A pay period is a predetermined set of consecutive calendar days during which an employee's work hours are recorded and for which a payroll check is subsequently produced. A System employee is paid on either a biweekly or a monthly basis. The biweekly pay period consists of two workweeks, each of which begins on a Thursday and ends on a Wednesday. The monthly pay period begins on the first day of the calendar month and ends on the last day of the month. The workweek for most monthly paid employees starts on Monday and ends on Sunday. These pay periods will not be changed without advance written approval of the System Human Resources Office.

2.2 Hours Worked

- 2.2.1 The FLSA does not limit the number of hours worked each day or week by an employee 16 years of age or older. A nonexempt employee may work as many hours as are agreed on with the supervisor and must be compensated for overtime worked as described in section 3.2.
- 2.2.2 Work that is not requested by an employer but is permitted must be counted as hours worked. Federal regulations place responsibility with the supervisor for controlling the hours worked by an employee.
- 2.2.3 Vacation, holidays, sick leave, other official leaves of absence and compensatory time are not counted as hours worked for assessing overtime liability under the FLSA. A nonexempt employee is not entitled to overtime credit under FLSA for work on a Saturday, Sunday or holiday unless total hours worked exceeds 40 hours in the workweek. These types of time off with pay are counted in assessing overtime liability under state law.
- 2.2.4 Travel that keeps a non exempt employee away from home overnight is counted as hours worked if the employee travels during normal duty hours or corresponding hours on Saturdays and Sundays. Travel outside normal duty hours while on an overnight trip does not count as hours worked. Travel performed both during and outside normal duty hours in association with a one-day assignment in another city that does not require the nonexempt employee to stay overnight is counted as hours worked. Travel that is considered the nonexempt employee's official duty, such as driving a truck or bus, is counted as work time regardless of whether performed during or outside normal duty hours.

2.3 Regular Hourly Rate

- 2.3.1 Under the FLSA, a regular rate of pay, expressed as a rate per hour, must be calculated for computing overtime pay. This rate must include both the basic monthly or hourly rates and any longevity or hazardous duty pay received during the month in which overtime occurs.
- 2.3.2 There are several methods for computing overtime. Each component must select a method and use it consistently.

3. FLSA OVERTIME FOR NONEXEMPT EMPLOYEES

- 3.1 Federal law requires a nonexempt employee to be compensated at a rate not less than one and a half times the regular rate of pay or be granted one and a

half hours of compensatory time for hours worked in excess of 40 hours within a workweek.

3.2 The component will compensate an eligible employee for overtime by: (1) granting the employee compensatory time off at the rate of one and one-half hours off for each hour of overtime worked; or (2) where granting compensatory time off is impractical, paying for the overtime at the rate equal to one and one-half times the employee's regular rate of pay. Employees who work in a public safety, emergency response or seasonal activity may accrue no more than 480 hours of compensatory time. All other nonexempt employees may accrue no more than 240 hours of compensatory time. Any employee who has reached the limit will be paid overtime compensation for additional overtime hours worked. The 480 hours represents 320 hours of overtime worked; the 240 hours represents 160 hours of overtime worked.

3.2.1 An employee who has requested the use of accrued overtime compensatory time will be permitted to use the accumulation within a reasonable period after making the request if his or her absence does not unduly disrupt the operation of the department.

3.2.2 Compensation for accrued FLSA overtime compensatory time will be paid at a rate of compensation representing the greater of: (1) the average regular rate received by the employee during the last three years of employment, or (2) the employee's final regular rate. This applies to payments to an active employee, an employee terminating employment, an employee transferring to another System component or state agency, and the estate of an employee who dies.

3.2.3 An employee who transfers to another state agency, including another System component, must be paid for his or her accrued FLSA compensatory time or be allowed to remain on the payroll to use up the time. When an employee transfers between two departments within the same System component, the department managers will agree whether the employee will be paid for the time, remain on the current department's payroll to use up the time or be allowed to transfer the time.

3.3 System practice is to minimize FLSA overtime worked and the resulting compensatory time balances. When practical, overtime compensatory time should be taken during the 12-month period following the end of the workweek in which the overtime was worked. The component may require the employee to take FLSA compensatory time and may require the employee to use FLSA compensatory time before using vacation time.

4. STATE OVERTIME FOR NONEXEMPT EMPLOYEES

4.1 When an employee has not worked more than 40 hours in a workweek but the total hours worked and hours of paid leave or paid holidays exceed 40 hours,

the employee will be allowed one hour of compensatory time off for every hour in excess of 40 in a workweek. Likewise, when the employee has worked more than 40 hours in a workweek and the total of hours worked and hours of paid leave or paid holiday exceeds 40 hours after subtracting FLSA overtime hours worked (which must be compensated as described in section 3), the employee will be allowed equivalent compensatory time off for the excess hours. An employee may accrue compensatory time only for hours worked at a regular duty station or approved duty station. An employee may not accrue compensatory time for hours worked at his or her residence.

- 4.2 This compensatory time must be taken during the 12-month period following the end of that workweek and may not be carried forward past the end of the 12-month period. When the component determines that allowing compensatory time off would be disruptive to normal teaching, research, and other critical functions, an employee may be paid for compensatory time on a straight-time basis.
- 4.3 When an employee requests in writing use of this compensatory time at least 90 days before the end of the 12-month period, the supervisor must either approve the request in writing or suggest an alternate date that the time may be used. If the employee requests use of compensatory time less than 90 days before it will expire, the supervisor should make every effort to allow the employee to use the time.
- 4.4 An employee may not be paid for unused state compensatory time upon termination of employment or transfer to a state agency outside the System. Payment for such time may not be made to the estate of a deceased employee. A terminating or transferring employee may, however, remain on the payroll to expend this type of compensatory time.
- 4.5 When an employee transfers between two System components or two departments within the same System component, the department managers will agree whether the employee will remain on the current department's payroll to use up the time or be allowed to transfer the time.

5. COMPENSATORY TIME FOR EXEMPT EMPLOYEES

5.1 From time to time an exempt employee may need to work more than 40 hours a week to accomplish job requirements. When extraordinary circumstances necessitate work hours beyond those routinely required for the position, such employees may, at the discretion of the CEO, be granted compensatory time off in accordance with state law. Provisions of Texas Government Code, Sections 659 and 662, and the Federal Fair Labor Standards Act relating to compensatory time programs for exempt employees include:

- 5.1.1 The number of hours of compensatory time awarded may not be more than the number of hours worked that exceeds 40 hours in a

workweek. The number of hours worked includes actual hours worked plus holiday and paid leave hours.

- 5.1.2 Each component must document the award and use of compensatory time.
- 5.1.3 All unused compensatory time expires 12 months after the end of the workweek in which the additional hours were worked.
- 5.1.4 A component may not award compensatory time for work performed at an employee's residence.
- 5.1.5 An employee, or the employee's estate, may not be paid for unused compensatory time.

5.2 Exempt employees are not covered by the overtime provisions of FLSA and are not eligible for overtime payment except as described in section 5.3.

5.3 Under the Appropriations Act, if the Texas Forest Service or Texas Engineering Extension Service has an approved compensatory time program for exempt employees, its exempt employees may be paid for compensatory time granted for working during an emergency if the Director certifies that the taking of compensatory time off would be disruptive to the agency's normal business functions. For the Texas Forest Service, the declaration of an emergency and the granting of compensatory time worked during an emergency must be approved by the Director. For the Texas Engineering Extension Service, the additional hours worked must result from a federal or state activation, and the Director must approve the granting of compensatory time.

6. COMPENSATORY TIME FOR OTHER TYPES OF EMPLOYEES

Special rules apply to agricultural workers, seamen, non-seamen shipboard employees, recreational employees, hospital employees, firefighters and law enforcement employees. The component human resources office can provide information related to these categories of employees.

7. VOLUNTEER WORK

A System employee who volunteers to perform civic, humanitarian or charitable services for the System will not be considered an employee for purposes of overtime calculation if the employee: (1) receives no compensation, (2) is paid only expenses, reasonable benefits or nominal fees for the services, and (3) performs services unlike those for which he or she is normally employed.. A System employee who volunteers to perform services for any other state agency will not be considered an employee of that agency for the purposes of overtime calculations. This section applies only to an employee who volunteers to perform the services.

8. SUBSTITUTE WORK

When an individual agrees, with the employer’s approval and solely at the individual’s option, to substitute during scheduled work hours for another System employee working in the same capacity, the hours worked as a substitute will be excluded in the overtime calculation.

9. MULTIPLE EMPLOYMENT

System Regulation 33.99.06, *Administration of Multiple Employment*, addresses overtime issues related to this type of employment.

10. WORK ON HOLIDAYS

Exempt and nonexempt employees who must work on holidays will be granted state compensatory time as described in System Regulation 31.04.01, *System Holidays*.

11. USE OF OVERTIME TO MEET EMERGENCY AND PEAK WORK-LOAD REQUIREMENTS

Regular employees will meet peak workload personnel requirements for emergencies to the extent feasible. Departments and units should temporarily use employees from other work units or ask regular employees to work overtime rather than incur the cost of hiring temporary personnel. While this is the general rule, whether to use regular employees on an overtime basis or hire temporary personnel will depend on the most practical, efficient and economical way to accomplish the tasks and perform the normal work of the departments or units.

CONTACT OFFICE: The System Human Resources Office

HISTORY: November 27, 2002

RECOMMENDATION: _____
Executive Vice Chancellor for Finance Date

Vice Chancellor for Administration Date

LEGAL SUFFICIENCY: _____
General Counsel Date

APPROVAL: _____
Chancellor Date