

**THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN  
OFFICE OF HUMAN RESOURCES  
POLICY AND PROCEDURES MEMORANDUM**

**FAIR LABOR STANDARDS ACT  
OVERTIME COMPENSATION**

**DATE:** June 1, 2004

**1. PURPOSE**

The purpose of this policy and procedures memorandum is to provide for the administration of overtime for non-exempt employees under the federal Fair Labor Standards Act (FLSA).

**2. POLICY**

It is the policy of The University of Texas of the Permian Basin to organize its schedule of activities in such a manner that employees are not required to work in excess of 40 hours within the workweek except when required by operating necessities. The FLSA requires that The University of Texas of the Permian Basin compensate non-exempt employees for any hours over 40 actually worked in a workweek at a rate of one and one-half times the employee's normal rate of pay.

**3. PROCEDURES**

**3.1 Prior Approval Required.** Overtime services required of non-exempt employees must have the prior written approval of the immediate supervisor or department head before overtime may be worked. Permitting overtime to be worked is the same as ordering or authorizing it. For example, if the supervisor is aware that a non-exempt employee works through lunch, starts early or stays late, and exceeds 40 hours per workweek, The University of Texas of the Permian Basin is responsible for compensating the employee for that overtime.

**3.2 Compensation for FLSA Overtime.** All non-exempt employees who are required or permitted to work in excess of forty hours in a workweek are entitled to additional compensation in one of the following ways:

**3.2.1 FLSA Compensatory Time.** Employees may be reimbursed for FLSA over-time by receiving FLSA compensatory time off at a rate of one and one-half hours for each hour over 40 actually worked. Paid leave or holidays taken during a workweek are not to be counted as hours worked in determining FLSA overtime hours. The following limitations are imposed:

- a.** Employees engaged in public safety or emergency response may not accrue more than 480 hours of FLSA compensatory time. Since FLSA compensatory time is accumulated at time and one-half, this limitation is 320 hours of actual overtime work (320 hours of over-time work x 1.5 = 480 hours).
- b.** All other non-exempt employees may not accrue more than 240

hours of FLSA compensatory time (equivalent to 160 hours of over-time work x 1.5 = 240).

- c. If an employee's FLSA compensatory time balance exceeds the accumulation limits of 240 or 480 hours, the employee must be paid any hours over the limit at one and one-half times the employee's regular rate of pay.
- d. FLSA compensatory time shall be taken within the 12-month period after it is earned, or it must be paid at one and one-half times the employee's regular rate of pay at the time the payment is made.
- e. Supervisors must ensure that accrued FLSA compensatory time hours do not exceed the maximum allowed by law, and should require employees to use their FLSA compensatory time to avoid exceeding those levels. Also, supervisors should ensure that FLSA compensatory time hours earned are not carried for more than 12 months, after which time they must be paid.
- f. An employee who has accrued FLSA compensatory time and requests to use it must be permitted to use the time off within a reasonable period after making the request if it does not unduly disrupt the operations of the Department. Undue disruption is not merely an inconvenience. An employee has a right to use compensatory time earned and must not be made to accept more compensatory time than he or she can realistically use.
- g. A non-exempt employee who has requested leave should exhaust any FLSA compensatory time balances before using his or her annual vacation leave.

**3.2.2 Payment of FLSA Overtime.** A non-exempt employee may be compensated for FLSA overtime by payment at the rate of one and one-half times the employee's regular rate of hourly pay. The regular rate of pay includes the employee's base salary, longevity pay, hazardous duty pay, housing, emoluments, and FICA benefit replacement pay. Payment for overtime is at the discretion of the President when granting compensatory time is not practical.

### **3.3 Payment of Unused FLSA Compensatory Time**

**3.3.1 Termination of Employment.** If an employee terminates employment with The University of Texas of the Permian Basin and has unused, accrued FLSA compensatory time, the employee must be paid for that time at a rate of time and one-half the employee's average regular rate received during the last three years or the final regular rate, whichever is higher. If the final period of employment is less than three years, the average rate will be calculated based on the rate(s) in effect during the period.

**3.3.2 Transfer between UTPB Departments.** If an employee has a balance of FLSA compensatory time upon promotion or transfer to another UTPB

department, the department in which the employee worked the FLSA overtime must pay the employee for any unused balance prior to transfer.

**3.3.3 Transfer of Employment.** When an employee transfers from one state agency or institution to another, FLSA compensatory time cannot be transferred between components or state agencies; the agency or component, at which the employee worked the FLSA overtime, must pay the employee for the accrued FLSA compensatory time.

**3.3.4 FLSA Compensatory Time Not Used Within Twelve Months.** Employees must be paid for accumulated FLSA compensatory time that is not used within the 12-month period following the end of the workweek in which it was earned.

**3.4 Occasional and Sporadic Employment.** A full-time employee may work, at his or her option, for UTPB on an occasional and sporadic basis in a part-time job, such as checking tickets at a football game. If the work performed in the occasional job is substantially different from that of the regular job, the hours worked in the part-time capacity are excluded in calculating overtime compensation.

**3.5 Separate Records for FLSA Overtime and State Compensatory Time.** State compensatory time balances and FLSA overtime are maintained separately and are not combined on timekeeping records.

#### **4. DEFINITIONS**

The **Fair Labor Standards Act (FLSA)** (29 U.S.C. §§ 201-219) establishes minimum wage and overtime standards for employees and regulates the employment of children.

**Non-exempt** employees are those who do not fall under the executive, professional, or administrative exemptions to the overtime provisions of the Fair Labor Standards Act and are therefore covered by the Act.

The **workweek** is a fixed and recurring period of seven consecutive 24-hour days, which begins at 12:01 A.M. Monday and ends at 12:00 Midnight Sunday. The University of Texas of the Permian Basin's regular work schedule for full-time employees is eight hours a day (plus an optional meal period) Monday through Friday between the hours of 8:00 A.M. to 5:00 P.M. A supervisor may approve adjusted work schedules, as needed for business purposes.

**Hours worked** include any hours that The University of Texas of the Permian Basin requires or permits an employee to work.

The **workday** is the 24-hour period beginning at 12:01 A.M. and ending at 12:00 Midnight. Working more than eight hours in a workday does not constitute overtime. Fair Labor Standards Act overtime occurs only after an employee actually works more than 40 hours in a workweek.

**5. AUTHORITY**

Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201-219  
*Texas Government Code* § 659.015  
*Christensen vs. Harris County*, 120 S. Ct. 1655 (2000)  
Regents' *Rules and Regulations*, Part Two, Chapter V, § 2.1

**6. APPLICABILITY**

This policy and procedures memorandum is applicable to all non-exempt positions at The University of Texas of the Permian Basin.