

**1. Title**

Fair Labor Standards Act – Overtime

**2. Policy**

Sec. 1 Policy Statement. The University of Texas System Administration will comply with the overtime provisions of the Fair Labor Standards Act (FLSA). U. T. System Administration will organize its schedule of activities in such a manner that employees are not required to work over 40 hours in a workweek except when required by operating necessities.

Sec. 2 Purpose. To provide administration of FLSA overtime provisions.

Sec. 3 Eligibility. Employees who are in positions classified as non-exempt by the Office of Employee Services (OES).

Sec. 4 FLSA Status.

4.1 OES will determine a job's FLSA status based on analysis of the duties performed, compensation level, and method of pay. Job title alone does not make a job exempt.

4.2 An employee paid on an hourly basis is not exempt from FLSA overtime provisions.

4.3 An employee's FLSA status is reflected in the Electronic Timekeeping System and in the Human Resources Management System.

Sec. 5 Prior Approval Required. A nonexempt employee must have prior approval from his or her immediate supervisor or department head before working hours that result in overtime earned. Permitting overtime to be worked is the same as ordering or authorizing it. If a supervisor is aware that a nonexempt employee works through lunch, starts early or stays late, and works more than 40 hours in a workweek, U. T. System Administration is responsible for compensating the employee for that overtime.

Sec. 6 Compensation of FLSA Overtime.

6.1 Nonexempt employees who are required or permitted to work in excess of 40 hours in a workweek are entitled to additional compensation in one of the following ways:

- (a) time off at a rate of one and one-half times for all time actually worked over 40 hours in a workweek; or
- (b) payment of accrued FLSA overtime.

6.2 FLSA Time Off in Lieu of Payment.

- (a) Employees may be compensated for overtime by accruing FLSA overtime at a rate of one and one-half times for all time actually worked over 40 hours in a workweek. Paid leave or holidays taken during a workweek do not count as hours worked in computing overtime. The following limitations apply:
  - (i) Employees engaged in public safety or emergency response may not accrue more than 480 hours of FLSA overtime. Since FLSA overtime is accumulated at time and one-half, this limitation is 320 hours of actual overtime work (320 hours of overtime work x 1.5 = 480 hours).
  - (ii) Other nonexempt employees may not accrue more than 240 hours of FLSA overtime (equivalent to 160 hours of overtime work x 1.5 = 240).
- (b) Supervisors must ensure accrued FLSA overtime does not exceed the maximum limits. Supervisors may require an employee to take off an afternoon, a day, or even an entire week to avoid the accumulation of additional overtime.
- (c) FLSA allows state agencies to choose whether to compensate nonexempt employees for overtime in the form of payment or FLSA overtime off. In instances when a mandatory payment is forthcoming, a manager may require the employee to take time off in order to decrease or limit the payment amount.
- (d) Supervisors may require nonexempt employees who have requested leave to use accrued FLSA overtime before using vacation leave.
- (e) An employee who has accrued FLSA overtime 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 U. T. System Administration. Undue disruption is not merely an inconvenience.

6.3 Payment of Accrued FLSA Overtime.

- (a) Employees may be compensated for overtime by payment of FLSA overtime accrued at time and one-half. Payment includes the employee's base salary or hourly rate, longevity pay, hazardous duty pay, housing emoluments, and benefit replacement pay. Payment is subject to federal withholding.
- (b) An employee will be paid for accrued FLSA overtime under the following circumstances:
  - (i) FLSA Overtime Exceeds Maximum Limits. An employee must be paid all or a portion of accrued FLSA overtime when the employee's balance exceeds the maximum accrual limit in order to bring the balance into compliance with the maximum limit.
  - (ii) FLSA Status Change. An employee will be paid all accrued FLSA overtime when the employee's FLSA status changes from nonexempt to exempt.
  - (iii) Transfer Between U. T. System Administration Departments. An employee who transfers from one U. T. System Administration department to another for any reason and has an FLSA overtime balance will be paid all accrued FLSA overtime by the department from which the employee transfers.
  - (iv) Annually. Departments will pay all employees all of their accrued FLSA overtime no later than the fourth quarter of each fiscal year.
  - (v) Separation or Transfer of Employment. An employee who separates employment or transfers to another State agency or institution of higher education and has an FLSA overtime balance will be paid all accrued FLSA overtime. FLSA overtime cannot be transferred between State agencies or institutions of higher education.

Sec. 7 Payment Processing.

7.1 To pay an employee for FLSA overtime, the department submits a payroll voucher and a printout of the employee's OT balance from the Monthly Leave Summary to OES. OES will review and forward the payroll voucher to Accounting and Purchasing Services (APS). APS will process the voucher for payment on the following cycle.

7.2 After the payment is processed, the department will deduct the FLSA overtime for which the employee was paid from the employee's FLSA overtime balance.

Sec. 8 Occasional and Sporadic Employment. An employee may choose to work for a U. T. System institution on an occasional and sporadic basis in a part-time capacity, such as checking tickets at a football game. If the work performed in the occasional job is substantially different from that of the employee's regular job, the hours worked in the part-time capacity are excluded in calculating overtime compensation. Also see INT129, *Outside Employment*.

Sec. 9 Separate Records for FLSA Overtime and State Compensatory Time. State compensatory time and FLSA overtime balances are maintained separately and are not combined on timekeeping records. Records of time worked and time taken off will be maintained in accordance with the U. T. System Administration Records Retention Schedule.

### 3. Definitions

Exempt Employees - executive, administrative, or professional employees who are paid at least \$455 per week on a salary basis and employees in certain computer-related occupations who are paid at least \$455 per week on a salary basis or at least \$27.63 per hour.

Fair Labor Standards Act (FLSA) - the federal law that establishes minimum wage, overtime pay, and youth employment standards affecting employees.

Hours Worked - hours U. T. System Administration requires or permits an employee to work.

Nonexempt Employees - employees whose job duties do not fall under one of the exemptions to the overtime provisions of FLSA and are therefore covered by the Act.

Workday - a 24-hour period beginning at 12:01 a.m. and ending at 12:00 midnight.

Workweek - 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.

**4. Relevant Federal and State Statutes**

[Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Sections 201-219](#)

[Fair Labor Standards Act of 1938, Title 29 Section 553](#)

[Texas Government Code Section 659.015, Overtime Compensation for Employees Subject to Fair Labor Standards Act](#)

**5. Relevant System Policies, Procedures, and Forms**

[INT129, Outside Employment](#)

[INT144, Multiple State Employment](#)

[Payroll Voucher](#)

**6. System Administration Office(s) Responsible for Policy**

Office of Employee Services

**7. Dates Approved or Amended**

June 1, 2004

December 9, 2009

July 19, 2011

July 1, 2013