



## 4.6.5 Fair Labor Standards Act (FLSA): Work Hours and Overtime Provisions for Non-Exempt Employees

Chapter 4 - General Personnel	Original Effective Date: November 2000
Section: 4.6 Classification and Compensation Administration	Date Last Reviewed: November 2016
Responsible Entity: Vice President and Chief Human Resources Officer	Date Last Revised: November 2016

### I. Purpose

To establish the UT Health San Antonio policy regarding the Fair Labor Standards Act (FLSA) for Non-Exempt and Exempt jobs.

### II. Scope

This policy applies to all non-exempt classified employees of UT Health San Antonio. Unless designated otherwise, all employees are non-exempt. FLSA designations can be found in the [Career Explorer](#) or by contacting the Office of Human Resources.

### III. Policy

#### A. General Policy

It is the policy of UT Health San Antonio (UTHSA), in the interest of cost-effective financial stewardship, that work schedules are organized so that non-exempt employees do not typically work in excess of forty (40) hours in a workweek, unless demanded by operating necessities. In these instances, all overtime must be approved by the employee's supervisor prior to the time being worked.

Overtime compensation requires that non-exempt employees be compensated for hours actually worked in excess of forty (40) during a workweek (Monday 12:00 AM through Sunday 11:59 PM). This compensation may take the form of compensatory time (FLSA compensatory time) or payment.

It is the practice of UTHSA to compensate employees for overtime services with FLSA compensatory time. Only under exceptional circumstances, when allowing FLSA compensatory time is impractical, will overtime compensation be paid.

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### B. Work Hours

Work hours include the time spent by the employee performing duties required by the department and pursued necessarily and primarily for the benefit of UTHSA. For non-exempt employees, the typical work schedule is forty (40) hours per workweek.

If a non-exempt employee works beyond the forty (40) hours, this time must be recorded for overtime purposes even if the time over forty (40) hours was not pre-authorized by the department.

Failure to obtain pre-authorization for working in excess of forty (40) hours in a workweek may result in disciplinary action for the employee. Departments must exercise control and enforcement to ensure that work is not performed which department management did not intend to be performed.

### C. Rest Breaks and Lunch Breaks

Rest breaks of short duration are not required by the FLSA or the State of Texas; however, departments have the discretion to allow rest breaks. Common practice is to allow a fifteen (15) minute rest break in the morning and another fifteen (15) minute rest break in the afternoon. Rest breaks count as time worked for FLSA purposes and must be included in the timesheet as hours worked during the workweek.

Lunch breaks are allowed for a maximum period of one (1) hour for all employees. In order to qualify as a bona fide lunch break, the employee must be completely relieved from work duties for a minimum of thirty (30) minutes for the purpose of eating regular meals or conducting personal business. Lunch breaks do not count as time worked for FLSA purposes and should not be included in the timesheet as hours worked during the workweek.

Each department may develop its own rest break policy and make its own arrangements for scheduling lunch and other breaks. For more information on scheduling breaks, refer to the Institutional Handbook of Operating Policies (IHOP) Policy [4.7.4 Flextime](#).

### D. Attendance at Training Programs, Meetings, and Lectures

Generally, attendance at training or educational programs, meetings, and lectures is counted as time worked if the attendance is directly related to the employee's job, if it occurs during the employee's regular working hours, and if it is required or allowed by the department.

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### E. Travel Time

Travel between home and the worksite is an ordinary and normal incident of employment and, therefore, is not considered time worked. However, travel time for job-related trips may or may not count as time worked for FLSA purposes depending on the type and time of travel.

#### 1. Home to Work for Special One-Day Assignment

When an employee regularly works in one city and is given a special one-day assignment in another city, the time spent traveling is considered time worked. Additionally, time the employee would normally spend commuting to the regular worksite must be deducted from time worked when traveling for a one-day special assignment. Meal breaks should not be included in time worked. Special assignments may include attendance at seminars, training sessions, conferences, etc.

Example: A non-exempt employee travels two (2) hours to a seminar in another city. The employee attends the seminar for eight (8) hours and then drives back home for two (2) hours. The employee must be paid for the eight (8) hours of time worked in another city and the four (4) hours of travel time (total 12 hours). However, the employee's normal commute time to work plus any meal time must be deducted from the total of twelve (12) hours.

#### 2. Travel As Part of the Employee's Work During the Day

Time spent traveling during the workday as part of the employee's job is considered time worked and must be recorded. This applies when the employee is required to travel from worksite to worksite.

#### 3. Overnight travel

Overnight travel keeps an employee away from home overnight. Overnight travel is counted as time worked when it overlaps with the employee's regular work hours and must be paid. Departments are encouraged to schedule travel during the employee's regular work hours. Overnight travel that occurs outside of an employee's regular work hours is not considered time worked when the employee is a passenger in an automobile, airplane, train, boat, or bus. However, if the employee is the driver of an automobile outside of regular work hours then the time spent driving is considered work time and must be compensated.

Example: Two non-exempt employees normally work Monday through Friday, 8:00 AM to 5:00 PM. The employees travel together by automobile for a two-day conference in another city. One drives, and the other is the passenger. They leave at 4:00 PM on Monday and arrive at 8:00 PM the same day. The employee who drove will record any time spent driving as time

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worked although the driving occurred outside of regular work hours. The employee who was the passenger must not record work time for the time spent in the automobile after regular work hours.

##### 4. Overnight Travel on Non-Working Days

Travel time on non-working days (such as Saturday and Sunday for most employees) also counts towards hours worked if conducted during the employee's regular work hours.

Example: An employee regularly works Monday through Friday, 8:00 AM to 5:00 PM. The employee travels on Sunday. Any time spent traveling on Sunday between 8:00 AM and 5:00 PM must be paid. Meal times can be deducted from time worked provided that the employee did not perform any work during the meal time. If the travel time occurred outside of the 8:00 AM to 5:00 PM time period, then the travel time is not paid unless the employee was driving.

##### F. On-Call Time

A non-exempt employee may be required to remain "on-call" at his or her regular worksite or within close proximity of the worksite. If the employee is not able to use his or her time effectively for personal purposes, then the "on-call" time counts towards hours worked for purposes of the FLSA.

##### G. FLSA Compensatory Time

FLSA compensatory time is time off, in lieu of overtime payment, equal to one and one-half times (1.5) hours actually worked in excess of forty (40) in a workweek.

Example: An employee who works forty (40) hours Monday through Friday and also works on Saturday for four (4) hours must be paid forty (40) hours of straight time at the employee's regular rate of pay plus be given six (6) hours of FLSA compensatory time (4 hours times 1.5).

Provisions regarding FLSA compensatory time include the following:

1. Employees may accrue up to 240 hours of FLSA compensatory time. One hundred sixty (160) hours of actual overtime worked equates to 240 hours of FLSA compensatory time (160 hours times 1.5). Three hundred twenty (320) hours of actual overtime worked equates to 480 hours of FLSA compensatory time (320 hours times 1.5). Any accumulated FLSA compensatory time in excess of 240 hours (or 480 hours for University Police Officers) must be paid to the employee.

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2. An employee who has accrued FLSA compensatory time and requests use of the time must be permitted to use the time off within a reasonable period after making the request so long as it does not unduly disrupt the operations of the department.
3. Employees are required to use accrued FLSA compensatory time before using vacation, sick, personal leave or state compensatory time.
4. FLSA compensatory time must be taken during the 12-month period following the end of the workweek in which it was accrued, or it must be paid at the employee's regular rate of pay at the time of payment.
5. Employees who have accrued, but not taken FLSA compensatory time will be paid for such time upon termination, death, or when the FLSA compensatory time balance exceeds 240 hours. Payment will be at the employee's regular rate of pay at the time of payout.

#### H. FLSA Paid Overtime

At the discretion of the department, a request can be made to pay a non-exempt employee overtime rather than provide FLSA compensatory time. Such requests may be approved when it would create an undue hardship or restrict staff resources on the department by allowing non-exempt employees to use their accrued FLSA compensatory time.

1. Any paid overtime must have the prior approval from the department and the Director of Payroll Services. The request for approval must include a justification as to why FLSA compensatory time could not be granted.
2. FLSA paid overtime is paid at a rate of one and one-half (1.5) times the employee's regular rate of pay for hours worked in excess of forty (40) in a workweek.
3. Overtime compensation is paid on a semi-monthly basis. Any overtime transactions must be submitted in the Document Review System (DRS) in accordance with established procedures and the payroll calendar.

#### I. State Compensatory Time

There are certain circumstances in which state compensatory time may be earned. State compensatory time is earned at a rate of one hour of compensatory time for each hour worked in excess of forty (40) hours in a workweek.

State compensatory time is earned when the total number of hours worked plus the total number of hours of paid leave or paid holidays exceeds forty (40) hours in one (1) workweek. In such situations, the employee has not actually worked

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more than forty (40) hours to warrant FLSA compensatory time at time and one-half (1.5), but has worked sufficient hours to earn state compensatory time.

Example: An employee uses eight (8) hours of sick leave on Monday and actually works eight (8) hours each day on Tuesday through Friday. The employee's supervisor requires the employee to work an additional four (4) hours on Saturday. In addition to the eight (8) hours of sick leave, the employee actually worked thirty-six (36) hours during the workweek for a total of forty-four (44) hours. This employee is compensated for forty-four (44) hours at straight time. Since the total of actual hours worked is less than forty (40), the employee is not entitled to overtime compensation at a rate of one and one-half. (1.5)

Provisions regarding state compensatory time includes the following:

1. State compensatory time is time off earned on an hour-for-hour basis (i.e. straight time).
2. Employees required to work during an approved holiday will earn state compensatory time. Refer to Section 4.7.10 in the HOP, "Holidays".
3. There is no maximum to the number of hours of state compensatory time that may be accrued.
4. State compensatory time must be taken during the 12-month period following the end of the workweek in which it was earned. An employee may not be paid for the unused state compensatory time. If state compensatory time is not taken within 12 months of accrual, it is forfeited .
5. State compensatory time cannot be transferred from one state agency to another.
6. Unused state compensatory time will be forfeited upon transfer to another department unless the receiving department agrees to accept the transfer of the accrued state compensatory time.
7. Employees will not be paid for any unused state compensatory time upon termination or death.

#### J. Determining the Type of Compensatory Time

There may be occasions when an employee may earn FLSA compensatory time and state compensatory time during the same workweek.

Example: An employee actually works thirty-eight (38) hours during the workweek. The employee then takes two (2) hours of vacation and works an additional three (3) hours on Saturday. The employee actually worked a total of forty-one (41) hours for the workweek and recorded a total of forty-three (43) hours during the workweek. For the three (3) hours over forty (40), the

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employee will receive one and one-half (1.5) hours of FLSA compensatory time and two (2) hours of state compensatory time.

#### K. Recordkeeping

FLSA compensatory time and state compensatory time must be recorded by departments in separate balances. The balances must not be combined for any reason. For information about timekeeping requirements, refer to Section 4.6.10 of the HOP, "Timekeeping."

### IV. Definitions

*There are no defined terms used in this Policy.*

### V. Related References

*There are no related documents associated with this Policy.*

### VI. Review and Approval History

- A. The approving authority of this policy is the University Executive Committee.
- B. The review frequency cycle is set for three years following the last review date, a time period that is not mandated by regulatory, accreditation, or other authority.

<b>Effective Date</b>	<b>Action Taken</b>	<b>Approved By</b>	<b>Date Approved</b>
<b>11/2000</b>	Policy Origination		
<b>11/2016</b>	Policy Revision		