PROCEDURE LIT.5.09.03
OVERTIME/COMPENSATORY LEAVE

SCOPE: Staff

1. *Overview*: All work activities will be completed within the standard work week. If need should cause for non-exempt employees to work in excess of the standard work week, the employees will receive compensatory time in accordance with the Fair Labor Standards Act (FLSA) or the General Appropriations Act.

2. *Approval*: All overtime worked must be approved in advance by the department official who has the authority to approve overtime. Administrative officials may arrange schedules in order to prevent overtime.

3. *FLSA Overtime/Compensatory Leave*: (Non-Exempt Employees)

   3.1. A non-exempt employee who is required to work in excess of forty (40) hours in a work week is entitled to compensation for the excess hours either by compensatory time off at the rate of one and one-half (1 1/2) hours off for each hour of overtime; or at the discretion of the supervisor, in cases when granting compensatory time off is impractical, the employee will receive pay for overtime at the rate equal to one and one-half (1 1/2) times the employee's regular rate of pay.

   Note: To convert straight-time hours to overtime hours, multiply the total number of straight-time hours by 1.5. To convert overtime hours to straight- time hours, divide the total number of overtime hours by 1.5.

   3.2. Any paid leave or holidays taken are not counted as hours worked in determining overtime hours.

   3.3. Each non-exempt employee may accumulate no more than 240 hours of overtime credit except for employees engaged in public safety, emergency response, or a seasonal activity who may accumulate no more than 480 hours of overtime credit.

      3.3.1. Employees must be paid for overtime in excess of the limit on accumulation, at the rate of one and one-half (1 1/2) times the employees' regular rate of pay. The hourly rate shall be calculated as 2080 hours divided into the total annual salary.

   3.4. The employee is paid for any accrued FLSA time upon leaving employment.

      3.4.1. The compensatory rate will be calculated at the employee‘s current rate of pay, regardless of when the hours were earned.

      3.4.2. The estate of any non-exempt employee will be paid for the accrued FLSA time.

   3.5. Non-exempt part-time employees must be paid at their regular rate of pay for hours worked over their designated hours; they may not accrue state compensatory time.

Non- exempt part-time employees must be paid FLSA overtime for all hours worked in excess of 40 in the work week.

3.6. A full-time employee of an institution of higher education who has appointments to more than one position within the same institution may receive pay for working more than 40 hours a week if the institution determines that pay in lieu of compensatory time is in the best interest of the institution. (77th State Legislature)

4. *State Overtime/Compensatory Leave*:

4.1. In the event an employee has not worked more than forty (40) hours in a work week, but the total hours worked and paid leave or paid holidays exceed forty (40) hours, the employee shall be allowed compensatory time off equal to the number of hours in excess of forty (40).

4.2. In the event an employee has worked more than forty (40) hours in a work week and the total hours worked and hours of paid leave or paid holidays exceed forty (40) hours the employee shall be allowed both FLSA and State Compensatory time.

4.3. The employee leaving employment (resignation, termination, or retirement) or transferring to another State agency will not be paid for any earned State Compensatory time nor allowed to transfer any unused State Compensatory time.

4.3.1. The estate of a deceased employee may not be paid for any unused State Compensatory time.

4.4. Employees of institutions of higher education or employees engaged in a public safety activity may be paid for State Compensatory time hours (non- FLSA overtime) on a straight time basis when taking the compensatory time off would be disruptive to normal teaching research, or other critical functions.

5. *Employees Exempt from Overtime Provisions*:

5.1. Executive, administrative and professional jobs are exempt from the wage and hour provisions of the FLSA and do not accrue compensatory time or overtime pay.

5.2. At the discretion of the agency, exempt employees may be allowed compensatory time off for hours in excess of forty (40) hours in a work week.

5.3. An employee who is exempt “shall receive a full salary for any week in which work is performed without regard to the number of days or hours worked” (FLSA, Section213(a)(1)). This is subject to the general rule that an employee need not be paid for any workweek in which the employee performs no work. The following exceptions also apply:

5.3.1. Deductions may be made for full day absences for personal reasons other than sickness or accident, jury duty, attendance as a witness at a judicial action, or temporary military leave.

5.3.2. Deductions may also be made for full day absences for sickness or disability if the deduction is made after exhaustion of paid sick leave or workers' compensation benefits.

5.3.3. Deductions may be made for absences of less than one day for personal reasons or because of injury or illness when accrued leave is not used by the employee for one of the following reasons:

5.3.3.1. Permission to use accrued leave was not sought or was denied;

5.3.3.2. accrued leave has been exhausted, or

5.3.3.3. the employee chose to use leave without pay.

5.3.4. Deductions may also be made for penalties imposed due to infractions of significant safety rules relating to the prevention of serious danger in the work place or to other employees.

5.3.5. Deductions may be made to pay for weeks in which an exempt employee takes unpaid leave under the Family Medical Leave Act (FMLA).

6. *Prohibition on Compensatory Time for Telecommuting*:

6.1. 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.

6.2. For State compensatory time purposes, the employee's personal residence may not be considered to be their regular place of employment or duty point.

7. *Use of Compensatory Time Before Lapsing*:

7.1. Both FLSA and State Compensatory time should be taken within sixty (60) days when possible.

7.1.1. State Compensatory time must be taken during the twelve (12) month period following the workweek earned or it will be lapsed.

7.1.2. Unused FLSA compensatory time does not lapse and is paid to the retiring or exiting worker.

7.2. Department heads should encourage their staff to take their compensatory time as soon after it is earned whenever possible. The use of all compensatory time must be scheduled so as not to disrupt work in the department. The employing supervisor is encouraged to reasonably accommodate the employee's use of accrued compensatory time.

7.3. If an employee submits a written request to use accrued compensatory time not later than the 90th day before the date on which the accrued compensatory time will lapse, the employer shall approve in writing the employee‘s request or provide an alternate date on which the employee may use the leave time.

7.4. Supervisors may require non-exempt employees who have requested leave to exhaust their FLSA compensatory time balances before using annual (Vacation) leave.

7.4.1. Employees should be allowed to manage their own State compensatory time and annual leave (determine which to use).

8. *Negative compensatory balances*: Per an interpretation by the State Auditor‘s Office an employee cannot carry a negative compensatory time balance.

Related Policies: LIT.5.09 Employee Leave

Relevant Forms/Documents:

Relevant TSUS Policies/Forms/Documents:

Relevant Statutes: Texas Human Resources Management Statutes Inventory 2006-2007 Biennium; Fair Labor Standards Act, 1938; Texas Government Code §659.015; Texas Government Code §659.016; Texas Government Code §659.02

Relevant SACSOC Standards:

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