



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 70.17, **Overtime Payment**

PURPOSE: The purpose of this Texas Tech University Health Sciences Center El Paso Operating Policy/Procedure (HSCEP OP) is to establish policy and procedure for overtime payment.

REVIEW: This HSCEP OP will be reviewed by July 1 of every odd-numbered year (ONY) by the Executive Director for Human Resources and the Payroll Director or designees, with recommendations for revision submitted to the Chief Financial Officer or designee by July 15.

POLICY/PROCEDURE:

1. Definition of Terms.

a. Non-exempt Employee.

An employee employed in a position designated as non-exempt (N) in the Personnel Pay Plan. A non-exempt employee is subject to the record-keeping and overtime provisions of the Health Sciences Center El Paso and the Fair Labor Standards Act (FLSA).

b. Exempt Employee.

An employee employed in a monthly salaried basis in a position designated as exempt (E) in the Personnel Pay Plan. An exempt employee is exempt from the record-keeping, overtime, and compensatory time provisions of the FLSA.

c. Overtime.

Hours of work in excess of 40 hours in a workweek by a non-exempt employee.

2. Record-keeping Requirements.

Each non-exempt employee is required to maintain a record of actual hours worked and leave hours taken through the Texas Tech University Health Sciences Center El Paso online Web Time Entry (WTE) System or, where applicable, with time clock entries for each pay period during which any time is worked. The employee's supervisor is responsible for assuring that the employee complies with this requirement and will certify that the reported hours are correct. WTE must be completed and submitted for pay periods 1-15 and 16-end of every month.

Each administrator is accountable for ensuring complete and accurate records worked by each non-exempt employee under the administrator's charge. Neither an employee nor an administrator shall disregard or circumvent the record-keeping or overtime requirements of the Health Sciences Center El Paso by instructing or permitting an employee to file incorrect Web Time Entry or by any other means.

An employee cannot be employed partially in an exempt and partially in a non-exempt status. An employee who works partially in a non-exempt status is considered to be totally non-exempt. Each administrator appointing an employee to a non-exempt position is responsible for assuring that accurate records of the total hours worked by that employee are maintained.

Monthly salaried exempt employees are exempt from the completion of the WTE and from the overtime regulations. Exempt employees shall report all leave taken through the Texas Tech online Web Leave Report (WLR) System.

The Fair Labor Standards Act provides that record-keeping and overtime violations may be prosecuted criminally and the violator fined up to \$10,000 for each violation. A second conviction for a violation may result in imprisonment.

3. **Overtime Work/Payment for Non-Exempt Employees**

Each administrator is expected to plan, organize, and schedule activities in a manner which minimizes overtime work. When emergencies arise which require overtime work, non-exempt employees will be entitled to compensation for such work in accordance with the following guidelines:

- a. The administrator schedules all overtime work. The employee does not determine the work schedule.
- b. An employee may not refuse an overtime assignment without a compelling reason.
- c. The number of hours worked during the workweek is the basis of determining if overtime has been worked. (See HSCEP OP 70.06, Employee Working Hours and Holidays, Sections 1.b. and 3.b. for additional information about workweeks.)
- d. Since only actual hours worked in excess of 40 in a workweek qualify for 1.5 time overtime pay, it is impossible to determine, prior to 40 hours having been worked in the workweek, if time worked on any given day will be eligible for overtime pay. An administrator, therefore, should not promise overtime payment when scheduling a non-exempt employee for extra hours.
- e. Care must be taken to avoid inadvertently working an employee overtime if the employee is employed by the Texas Tech University Health Sciences Center El Paso in more than one capacity. All time worked for the HSC by a non-exempt employee must be combined and total hours in excess of 40 per workweek must be compensated. It is the responsibility of each employee to inform the current department administrator prior to accepting other Texas Tech employment and the responsibility of the administrator to avoid unintended overtime work.
- f. When a person is appointed to a non-exempt position and hours worked in excess of 40 per week are correctly reported as such through WTE, overtime will be paid from the account of the employee's primary position and at the rate applicable for that position. When WTE timesheets for the same pay period are submitted for different positions, from different departments, overtime will be identified as a result of the combining of those reports in the payroll system. When this occurs, the overtime will be attributed to and paid from the account on which the employee is paid as the primary position.
- g. An employee cannot be employed in an exempt and non-exempt capacity during the same workweek. An employee employed in any capacity that would normally be partially exempt and partially non-exempt loses the exemption during any workweek so employed. All hours worked in all capacities must be combined to determine compensatory time entitlements.
- h. Non-exempt hourly employees required to work extra hours on normal work days or on nonwork days will be paid for those hours at straight time rates provided the total hours worked during that workweek do not exceed 40 hours.

Non-exempt hourly employees required to work more than 40 hours in any workweek are entitled to compensation for such overtime. The hours worked in excess of 40 will be multiplied by 1.5 and will be paid at the regular rate of pay plus any applicable longevity, hazardous duty, or night shift differential adjustment. Any paid leave or holiday hours taken during a workweek are not counted as hours worked in determining overtime hours worked. The Texas Tech payroll system will automatically make this calculation and include the compensation with regular pay based on hours worked for the workweek as reported through WTE.

In situations in which the employee has not worked more than 40 hours in a workweek, but the total hours worked plus hours of paid leave and paid holidays exceeds 40 hours, the employee will receive straight time pay for the total hours of work plus the total hours of holiday and leave time.

In situations in which the employee has worked more than 40 hours in a workweek and has taken paid leave or paid holidays in the same workweek, the employee will receive straight time pay for the first 40 hours of work plus the total hours of holiday and leave time. The employee is entitled to compensation for all hours worked in excess of 40 in a workweek. All hours worked in excess of 40 in a workweek will be multiplied by 1.5 and will be paid at the regular rate of pay plus any applicable longevity, hazardous duty, or night shift differential adjustment. The Texas Tech payroll system will automatically make these calculations and include the compensation with regular pay based on the hours worked for the workweek as reported through WTE.

4. **Accrual and Use of Compensatory Time, Exempt Employees. [a]**

[a] In accordance with the Texas Government Code, Section 659.016.

- a. Full-time employees who are exempt as executive, professional, or administrative employees from the overtime provisions of FLSA are paid for the accomplishment of assigned tasks without accounting for hours worked or being entitled to overtime pay or compensatory time accrual. However, such employees may be allowed to accrue and take compensatory time off provided the department has an approved compensatory time policy and record keeping system.
- b. In order for a policy/system to be approved, it must comply with the following rules:
 - (1) A written procedure must be prepared by the department, reviewed and recommended for approval by the Assistant Vice President for Human Resources and approved by the appropriate vice president, the Executive Vice President for Finance and Administration and the President. A copy of the approved procedure is to be filed with the Human Resources Department prior to implementation.
 - (2) Minimum requirements for an acceptable system are:
 - (a) Preparation and approval of a record each time an exempt employee accrues or uses compensatory time (Attachment A); and
 - (b) Maintenance of a log for each covered exempt employee (Attachment B).

These forms are subject to audit by the Office of Audit Services and the State Auditor.

- (3) Compensatory time for exempt professionals, executives, or administrative employees is accrued at a rate not to exceed one hour for each hour actually worked in excess of 48 hours during any calendar week.
 - (4) Compensatory time accrued by full-time exempt employees as a result of being required to work on a national or state holiday that does not fall on a Saturday or Sunday is not covered by this policy. Compensatory time for such work will be granted in accordance with the provisions of HSCEP OP 70.06.
 - (5) FLSA exempt employees must take accrued compensatory time off during the 12 month period following the end of the workweek in which the excess hours were accrued. If an exempt employee is unable to take accrued compensatory time before the end of the 12 month period, the hours will be forfeited. An FLSA exempt employee shall not be paid for any unused compensatory time earned in this manner. However, with supervisor approval, an employee may be paid for the hours of compensatory time the employee earns for work directly related to a disaster or emergency declared by the appropriate officer of the state or federal government. Any accrued balance does not constitute a claim for reimbursement upon termination of employment or death of the employee.
 - (6) Employees must take accrued compensatory time, if any, prior to taking leave without pay except when such leave without pay is due to a workers compensation accident or disciplinary action.
- c. Part-time FLSA exempt employees may accrue compensatory time when the number of hours worked plus holiday or other paid leave taken during that workweek exceeds the number of hours that the employee was designated to work.
- d. In accordance with 29 C.F.R. Section 541.118, an employee who is exempt as an executive, professional, or administrative employee under 29 U.S.C. Section 213 (a)(1) (FLSA) "shall receive full salary for any week in which work is performed without regard to the days and number of hours worked." This is subject to the following exceptions as well as the general rule that an employee need not be paid for any workweek in which the employee performs no work.
- (1) A deduction may be made from the salary of an employee who is exempt as an executive, professional, or administrative employee under 29 U.S.C. Section 213(a)(1) if:
 - (a) The employee is not at work for a full day or longer for personal reasons other than sickness, accident, jury duty, attendance as a witness at a judicial proceeding, or temporary military leave;
 - (b) The employee is not at work for a full day or longer because of sickness or disability, including sickness or disability covered by worker's compensation benefits, and the employee's accrued sick leave or worker's compensation benefits have been exhausted;
 - (c) The deduction is a penalty imposed for a violation of a significant safety rule relating to prevention of serious danger in the workplace to other persons, including other employees; or
 - (d) In accordance with the special provisions applicable to executive, professional, or administrative employees of public agencies set forth in C.F.R. Section 541.5d, the employee is not at work for less than one day for personal reasons or because of illness or injury and accrued leave is

not used by the employee because: permission to use accrued leave was not sought or was denied; accrued leave has been exhausted; or the employee chooses to use leave without pay.

(2) In addition to the above provision, the Texas Government Code, in accordance with Section 541.5d of the Code of Federal Regulations, allows that deductions from the pay of an executive, professional, or administrative employee for absences due to a budget required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

e. If a deduction is made from an exempt employee's salary for any reason other than one of the authorized exceptions outlined above, including disciplinary leaves without pay, the employee is entitled to reimbursement of the amount that should not have been deducted. Failure to reimburse the employee the amount deducted shall render the employee non-exempt and make him or her eligible for overtime pay for the workweek in which the deduction occurred.

5. Faculty Employees Not Eligible for Compensatory Time or Overtime.

Faculty employees are paid for the accomplishment of assigned tasks without accounting for hours worked. Such employees will work the number of hours each week as determined and scheduled by the appropriate administrator in accordance with departmental needs, and will not accrue compensatory time or qualify for overtime.

6. Place Where Work is Performed.

No employee, whether or not subject to FLSA, shall accrue overtime for work conducted at any location other than the employee's regular place of employment or assigned duty point. In no event shall an employee's personal residence be deemed to be that employee's regular place of business or duty point for the purpose of this subsection without the written approval of the President. [a]

A request for exception should include the type of work to be performed, how the time and productivity will be monitored, how it meets the business needs of TTUHSCEP to have this person work at home, and the duration for which the exception is being requested.

[a] In accordance with the Texas Government Code, Section 659.018.

7. Additional Compensation.

Additional compensation may be approved for exempt employees and faculty members for work in addition to their regular duties. Authority for payment will be as specified in HSCEP OP 70.16, Compensation in Excess of Base Salary for School of Medicine. Special Augmentation, in accordance with MPIP rules, will be used to compensate Practice Plan physicians for additional physician duties.

Non-exempt employees must be compensated for work in excess of 40 hours in any workweek in accordance with normal overtime payment procedures and may not be paid through the additional compensation process.

8. Right to Change Policy.

TTUHSCEP reserves the right to interpret, change, modify, amend, or rescind this policy in whole or in part at any time without the consent of employees.