**Overtime and Compensatory Time Policy UPPS No. 04.04.16**

**Issue No. 8**

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**Next Review Date: 06/01/2024 (E3Y)**

**Sr. Reviewer: Associate Vice President for Human Resources**

**POLICY STATEMENT**

*Texas State University is committed to providing fair and equitable remuneration to eligible employees for overtime and compensatory time worked.*

**01. BACKGROUND INFORMATION**

01.01 This policy sets forth the overtime and state compensatory time procedures for all Texas State University employees. The executive vice president for Operations, Chief Financial Officer must approve any exception to this policy.

01.02 The overtime and state compensatory time policies and procedures set forth herein strive to provide maximum flexibility to department heads. However, all decisions are subject to normal administrative review and approval, and must comply with applicable university, state, and federal requirements.

01.03 The university president, within the boundaries of federal and state law, may authorize modification to any and all provisions of this policy to meet university needs and work requirements.

Human Resources is responsible for classifying positions as exempt or non-exempt, as defined in the [Fair Labor Standards Act (FLSA)](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf).

The university’s standard workweek is 40 hours, begins at 12:01 a.m. on Sunday, and ends at midnight the following Saturday. Some positions, as a condition of employment, may require an employee to work more than 40 hours in a workweek due to the nature of the job. Hours worked include:

* + 1. all time that the university requires an employee’s presence on university premises or at a prescribed or authorized workplace; and
		2. all time during which the university permits an employee to work, whether or not required to work. Hours worked do not include paid leave hours such as holidays, vacation, sick leave, or emergency leave.

The university permits employees to work in excess of 40 hours per week only with prior supervisory approval. This applies to all classified and unclassified employees, as well as those working on campus or remotely. Supervisors may take appropriate disciplinary action if an employee fails to obtain the supervisor’s prior approval to work hours in excess of 40 per week.

The university does not consider that employees who reside on university property permanently or for extended periods, as a condition of employment, work all of the time while on the premises.

Employees will record and round work time to the nearest quarter hour.

**02. DEFINITIONS**

02.01 Classified Employees – employees who are covered by the provisions of FLSA and are eligible to earn both FLSA overtime and state compensatory time.

02.02 [Fair Labor Standards Act](https://www.dol.gov/agencies/whd/flsa) (FLSA) – a federal statute that establishes,

 among other things, the federal minimum wage and required overtime compensation for certain employees at a rate not less than one and one-half times the regular rate of pay after 40 hours of work in a workweek.

02.03 FLSA Overtime – time earned by a classified employee at the rate of one and one-half hours for each hour worked over 40 hours in a workweek, as provided by FLSA, [Section 659.015. of the Texas Government Code](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.659.htm#659.015), and this policy.

02.04 On-Call Status – some employees may be designated to be available to accept communications or return to work during certain periods of time that are outside of the employee’s normal working hours.

\*02.05Skeleton Crew – the minimum number of staff necessary to operate and maintain the essential functions of the department, as determined by the department head, or designee. For example, skeleton crews are commonly utilized during energy conservation days.

02.06 State Compensatory Time – time earned at the rate of one hour for one hour under the provisions for state compensatory time, as provided in [Section 659.015. of the Texas Government Code](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.659.htm#659.015) and this policy.

An employee may only accumulate state compensatory time for hours worked at the employee’s remote work location if the employee obtains prior approval to work hours in excess of 40 per week. Supervisors may take appropriate disciplinary action if an employee fails to obtain the supervisor’s prior approval to work hours in excess of 40 per week.

02.07 Unclassified Employees – employees exempt from the provisions of FLSA and, thus, not eligible to earn FLSA overtime, but are eligible to earn state compensatory time.

**03. EMPLOYEE CLASSIFICATIONS AND WORK SCHEDULES**

03.01 Categories of Employees

There are five categories of employees at the university: faculty, administrative officers, unclassified, classified, and student.

a. Faculty – employees with a specific academic rank holding a teaching appointment for a fixed term as determined by the university president and approved by [The Texas State University System (TSUS) Rules and Regulations, Chapter V, Section 4](https://www.tsus.edu/about-tsus/policies.html).

b. Administrative Officers – employees determined by the university president, to include vice presidents, academic deans, and the director of Athletics, that are exempt from the FLSA’s overtime provisions, and do not have a [Pay Plan](https://www.hr.txstate.edu/compensation/universitypayplan.html) pay range maximum.

* + 1. Unclassified Staff – employees that are exempt from FLSA’s overtime provisions and do not have a [Pay Plan](https://www.hr.txstate.edu/compensation/universitypayplan.html) pay range maximum.
		2. Classified Staff – employees that are covered by FLSA’s overtime provisions and have a [Pay Plan](https://www.hr.txstate.edu/compensation/universitypayplan.html) pay range minimum and maximum.
		3. Student Employees – employees who are concurrently enrolled at Texas State with the primary goal of achieving a degree. The employment is interim or temporary in nature and is incidental to the pursuit of an academic program. All student employees, except for selected graduate student employees, are non-exempt and are subject to FLSA overtime provisions.

Additional information on student employees can be found in [UPPS No. 07.07.03](http://policies.txstate.edu/university-policies/07-07-03.html), Hourly Student Employment Procedures; [UPPS No. 04.04.03](http://policies.txstate.edu/university-policies/04-04-03.html), Staff Employment; [UPPS No. 07.07.06](http://policies.txstate.edu/university-policies/07-07-06.html), Salaried Graduate Student Employment, and the [University Pay Plan](https://www.hr.txstate.edu/compensation/universitypayplan.html).

03.02 Full-Time Classified Employees

It is university policy to keep classified employee-paid hours in excess of 40 to a minimum. Supervisors should monitor and manage work schedules to avoid authorizing classified employees to work in excess of 40 hours per week. However, as a condition of employment, a department may require classified employees to work schedules that result in paid time in excess of 40 hours per week. When this occurs, the employee will record the additional hours worked in excess of 40 hours resulting in FLSA overtime or state compensatory time, as appropriate.

The university permits additional hours worked only when authorized by the supervisor. Supervisors may take disciplinary action up to and including termination of employment if a classified employee fails to obtain the supervisor's prior approval to work, except in emergency or on-call situations.

If a classified employee works in an emergency or on-call situation, the employee should report it to the supervisor on the next working day, or as soon as practicable. Supervisors will only authorize overtime by exception.

The university will compensate a classified employee for all hours worked in excess of the standard 40-hour workweek as follows:

a. Regular (FLSA) Overtime (earned within the employee's department)

Employees subject to these provisions of FLSA are entitled to compensation for any hours worked in excess of 40 in a workweek.

1) The university may allow an employee to accrue and take FLSA overtime leave at a later date at the rate of one and one-half hours for each hour over 40 worked during the workweek. If taking FLSA overtime accrued leave would disrupt normal operations, the university may choose, in its sole discretion, to issue monetary compensation to the employee. A department may submit a request to Human Resources to issue monetary compensation for some or all accrued FLSA overtime at any time. The account manager should ensure that overtime payments are adequately budgeted prior to authorizing payment.

2) Employees may carry an FLSA overtime balance up to, but not to exceed, 100 hours. Once an employee has accrued 100 hours, the employee must receive all additional FLSA overtime worked in the form of monetary compensation at the employee’s regular pay rate in the pay period immediately following that in which they earned the hours. The payroll system will generate this payment automatically.

3) When an employee is issued monetary compensation for FLSA overtime, the amount is calculated by multiplying one and one-half hours for each hour worked over 40 during the workweek by the employee's regular hourly pay rate. Subject to the above conditions, the employee receives monetary compensation for overtime hours at the university’s discretion.

4) Student employees, with the exception of selected graduate student positions, receive hourly pay for all hours worked. The university will pay any hours worked over 40 hours in a workweek at time and one-half.

5) Upon termination of employment or death, the university will pay a classified employee, or their estate, for any unused FLSA overtime earned at a rate of compensation not less than:

(a) the average regular rate received by such employee during the last three years of employment; or

(b) the final regular rate received by the employee, whichever is

 greater.

6) FLSA provisions apply to classified employees holding multiple concurrent appointments (positions) at the university. On the occasion when a classified employee with more than one appointment works over 40 hours in a workweek, the university will prorate responsibility for payment of all overtime hours between appointments. Employees paid on a salaried basis will receive proration based on full-time equivalency (FTE). Employees paid on an hourly basis will receive proration based on the number of hours worked in each appointment during the specific workweek.

7) The regular hourly pay rate for employees for overtime or state compensatory time purposes is determined by combining basic pay, state longevity pay, and hazardous duty pay.

8) Department Transfers – When an employee transfers from one department to another without a break in service, the hiring department has the option of accepting or rejecting any of the transferee's unused FLSA overtime balance. If the hiring department rejects the unused FLSA overtime balance transfer, the department the employee is exiting must pay the transferee's unused FLSA overtime balance at the time of transfer. State compensatory time balance will transfer.

b. State Compensatory Time

1) When a classified employee has not worked more than 40 hours

during a workweek, but the total of hours worked plus paid leave, holidays, and compensatory time taken exceeds 40 hours, the employee will earn state compensatory time on a straight time basis for the excess hours. Employees must take state compensatory time during the 12-month period following the end of the workweek in which the compensatory time was accrued or it lapses, according to [Texas Government Code §659.015(g)](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.659.htm).

2) When a department authorizes a regular classified employee to work on an official university holiday, the employee will receive state compensatory time off on a straight time basis for all hours worked during the holiday, and, if applicable, the overtime provisions in Section 03.02 a. shall apply. The employee must take the state compensatory time within the 12-month period following the date of the holiday worked. Supervisors may vary an employee’s work schedule to avoid accrual of state compensatory time with the exception of the time needed to account for energy conservation days.

3) Payments for State Compensatory Time – Employees will lose state compensatory time not taken within the 12-month period following the end of the workweek in which they earn the time. The university does not authorize cash payment for lapsed state compensatory time or for unexpired state compensatory time upon termination. However, the employee may receive cash payment for state compensatory time as an exception to this policy, as provided below:

(a) The executive vice president for Operations, Chief Financial Officer must approve issuance of monetary compensation

prior to employment termination for accrued, unexpired, or un-lapsed state compensatory time when taking off this time would disrupt the normal teaching, research, or other critical functions of the institution. The account manager should ensure such

payments are adequately budgeted before requesting payment.

(b) With the approval of the divisional vice president, a terminating employee may remain on the payroll until the end of the current month to expend unexpired state compensatory time. An employee will lose any state compensatory time balance remaining at the close of this option as provided in 3) of this subsection. NOTE: Due to the provisions of state law, if an employee remains on the payroll under this option, that employee may not transfer to a state agency or Texas public institution of higher education until the appointment ends. State compensatory time does not transfer to or from another institution of higher education or state agency.

(c) The divisional vice president may approve payment for the hours of state compensatory time the employee earns for work directly related to a disaster or emergency declared by the appropriate state or federal officer.

03.03 Full-Time Unclassified Employees

This section addresses full-time administrative officers, unclassified staff, and faculty who earn vacation.

* + 1. The university would prefer to keep the combination of actual work hours and paid leave hours in excess of 40 per week for unclassified employees to a minimum. However, the university recognizes, as a condition of employment, that departments expect unclassified positions to work whatever hours they require, within any guidelines established by the supervisory chain of command. The university permits additional hours worked only when authorized by the supervisor. Some positions may routinely have work schedules that exceed 40 hours per week.
		2. Unclassified employees do not earn FLSA overtime at time and one-half. They are only eligible to earn state compensatory time at a rate not to exceed one hour for one hour.
		3. Unclassified employees must take state compensatory time during the 12-month period following the end of the workweek in which the compensatory time was accrued or it lapses, according to [Texas Government Code §659.015(g)](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.659.htm).

 Texas state law prohibits unclassified employees from receiving pay for any unused state compensatory time.

* + 1. All state compensatory time off is at the discretion of the supervisor within the state compensatory time off policy. Both the employee and the supervisor must agree on any time taken.
		2. No more than 24 consecutive hours of state compensatory time may be used at any one time without approval from the divisional vice president. This excludes energy conservation days.
		3. An unclassified employee will earn state compensatory time for all hours worked on an official university holiday. The employee must take the state compensatory time within the 12-month period following the date of the holiday worked.
		4. An unclassified employee who is in an on-call status and who is called back to work during hours other than the employee's regular work hours may receive state compensatory time for such hours. Travel time to and from work during such on- call hours is not considered work time.

03.04 Dual Employment

The state considers an individual employed by two or more state agencies as working for one employer (e.g., the state of Texas) for overtime and state compensatory time purposes. The agencies involved will determine which agency is the primary employer responsible for assuring the proper compensation, when applicable.

03.05 Regular and Non-Regular Part-Time Classified Staff Employees

a. Hours up to 40 – Employees must receive monetary compensation for each hour worked up to 40 in any workweek resulting from the combination of hours worked and paid leave.

b. Hours worked beyond 40

1) Regular employees must receive compensation for all hours worked in excess of 40 in any workweek in accordance with the provisions of Section 03.02.

2) Non-regular employees will receive monetary compensation for all hours worked in excess of 40 in any workweek at time and one-half.

03.06 Regular Part-Time Unclassified Staff Employees

a. Hours up to 40 – Employees may receive state compensatory time according to Section 03.02 for each hour up to 40 in any workweek (resulting from the combination of hours worked and paid leave) that exceeds the number of hours the employee was appointed to work that week. Employees may not receive monetary compensation for such hours.

b. Hours beyond 40 – Employees who work in excess of 40 hours in any workweek shall receive compensation according to the provisions of Section 03.02.

03.07 Non-Regular Part-Time Unclassified Staff Employees

a. Hours up to 40 – Employees will be paid for each hour worked.

b. Hours beyond 40 – Employees will not be paid for hours worked beyond 40.

**04. ON-CALL POLICY**

04.01 Supervisors may ask their employees to function in an on-call status as needed and may request they return to work within a prescribed time period. This section pertains to those employees who are required to function in an on-call status with regard to the accrual of appropriate FLSA overtime and state compensatory time.

In certain circumstances, exempt employees may be compensated for being in an on-call status. The appropriate vice president must approve such compensation.

The university will compensate a classified employee in an on-call status who is called back to work as stipulated in this policy or in accordance with any on-call policy and approved by the appropriate vice president.

Travel time to and from work while in an on-call status is not considered work time.

**05. CHANGES IN FAIR LABOR STANDARDS ACT STATUS**

05.01 Classified to Unclassified – Concurrent with the change to unclassified status, the university will pay the employee for any unused FLSA overtime at the classified hourly pay rate in effect at the time of the change. Any state compensatory time balance will remain.

05.02 Unclassified to Classified – Concurrent with the change to classified status, the unclassified employee's unused state compensatory time balance will remain.

FLSA status will only change from classified to unclassified on the first day of a workweek.

**06. PROCEDURES FOR TAKING TIME OFF**

Supervisors have total discretion to modify an employee’s work hours to manage the accrual of FLSA overtime or state compensatory time. Supervisors are encouraged to accommodate the employee's use of accrued FLSA overtime and state compensatory time to the extent practical within university policy.

06.01 FLSA Overtime

An employee may request permission to use accrued FLSA overtime at any time.

Supervisors may deny a request if the employee’s absence would unduly disrupt the department operations.

If an employee has requested time off to use accrued vacation leave, the supervisor may require the employee to utilize accrued FLSA overtime before taking vacation leave.

Supervisors may require an employee to take accrued FLSA overtime leave at any time to manage further accumulation and liability of FLSA overtime leave balances.

06.02 State Compensatory Time

An employee may request permission to use accrued state compensatory time at any time. The use of state compensatory time must be mutually agreeable between the employee and supervisor.

Supervisors may deny a request if the employee’s absence would unduly disrupt department operations.

However, if a classified employee requests to use state compensatory time at least 90 calendar days before it will expire, the supervisor shall approve the employee’s request or provide the employee with an alternative date on which to use the compensatory time before it expires.

When the supervisor does not approve an employee’s 90-day advance request, the supervisor shall provide, in writing, the reasons for the denial, as well as alternate dates when the employee may take compensatory time off before it expires. Failure to accept an alternative date may result in loss of state compensatory time upon expiration.

Human Resources will notify employees and their department time administrator about any state compensatory time that is set to expire within the ensuing 120 days.

06.03 Energy Conservation Days

A regular staff employee who does not work on a scheduled energy conservation day must use paid leave to cover their absence. Employees are expected to use their state compensatory time, FLSA overtime, or vacation leave to cover these days or be placed on leave without pay.

Since the university may not advance overtime or state compensatory time, employees must acquire the necessary hours in advance. Supervisors must provide ample opportunity for an employee to earn the necessary FLSA overtime or state compensatory time in advance of an energy conservation day.

If an employee earns FLSA overtime or state compensatory time in preparation for an energy conservation day but uses the hours for another reason, the supervisor has discretion on whether to allow the employee the opportunity to earn additional hours to cover the energy conservation day.

Supervisors may require an employee to use FLSA overtime for energy conservation days before utilizing state compensatory time or vacation leave.

A part-time classified employee generally will not accrue FLSA overtime or state compensatory time. Therefore, additional hours worked are paid as they are worked during the year to offset leave without pay during an energy conservation day. Supervisors are encouraged to work out a plan with their employee to set expectations on when additional payments and reduction for leave without pay will occur.

**07. REST AND MEAL PERIODS**

07.01 Supervisors may allow two paid, 15-minute rest periods during the workday for full-time employees. For employees working at least half-time, but less than full-time, supervisors may allow one paid, 15-minute rest period per workday.

Employees working less than half-time are not authorized paid rest periods.

Employees may not use paid rest periods to shorten the workday or lengthen the lunch hour. Rest periods within an individual office should be managed appropriately as to minimize disruption to operations or delivery of services to the institution.

a. [Rest Periods](https://www.dol.gov/general/topic/workhours/breaks) – Rest periods of 15 minutes or less are considered work time and recorded as regular hours worked.

b. Meal Periods – *Bona fide* meal periods are not considered work time. Employees should be provided with at least 30 minutes for a meal period, during which they are completely relieved from duty. Employees are not required to leave the premises, but if they are required to perform any work, the meal period converts to work time. If an employee is provided with a meal period of less than 30 minutes, the entire period is considered work time.

07.02 A department head may adjust the number and frequency of rest periods as necessary to maintain a safe operating situation for employees working under potentially hazardous conditions.

**08. TIMEKEEPING PROCEDURES**

08.01 Department heads will ensure that all employees are trained to comply with one of the following processes for recording exceptions to their normal work schedule. Regardless of which method is used (a. or b. below), time should be reported weekly but no later than the end of the calendar month.

a. Employees will enter time using the university’s designated timekeeping system. Time entries should be entered on a weekly basis and routed to the employee’s immediate supervisor, or designee, for review and approval. Supervisors, or designee, are responsible for approving time entries as soon as possible, but no later than one week after receipt or notification.

b. In the event that the designated timekeeping system is unavailable, employees should record time on a manual time report, signed by the employee and immediate supervisor. Hours worked from the manual time report should be entered in the university’s designated timekeeping system by the employee’s supervisor or department’s designated time administrator by the designated payroll deadline.

c. Unreported and unpaid hours worked will not be accepted more than 24 months after the work was performed. Back wages are subject to the [Department of Labor Statute of Limitations](https://www.dol.gov/general/topic/wages/backpay)

**\*09. REVIEWERS OF THIS UPPS**

09.01 Reviewers of this UPPS include the following:

Position Date

 Associate Vice President for June 1 E3Y

Human Resources

Assistant Vice President for June 1 E3Y

Talent Strategy and Engagement

Chair, Faculty Senate June 1 E3Y

Chair, Staff Council June 1 E3Y

**10. CERTIFICATION STATEMENT**This UPPS has been approved by the following individuals in their official capacities and represents Texas State policy and procedure from the date of this document until superseded.

Associate Vice President for Human Resources; senior reviewer of this UPPS

Executive Vice President for Operations, Chief Financial Officer

President