



# PRAIRIE VIEW A&M UNIVERSITY

A Member of the Texas A&M University System

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OFFICE OF BUSINESS AFFAIRS MEMORANDUM FY 08-08

Memo FY 08-08 Supersedes VPBA MemoFY07-18

Distributed via Campus Email

TO: All Employees

FROM: Mary Lee Hodge, Vice President for Business Affairs

SUBJECT: Compensatory Time / Exempt and Non-Exempt Employees

The Fair Labor Standards Act (FLSA) promulgates employer/employee rules and regulations. The purpose of this memorandum is to remind all employees of our institutional policy with respect to eligibility of non-faculty employees regarding compensatory time off and overtime. In addition, this memorandum also defines the work week as beginning Monday and ending on the following Sunday. Three (3) categories of non-faculty employees will be discussed, starting with Exempt Administrative and Professional Employees.

**EXEMPT ADMINISTRATIVE AND PROFESSIONAL EMPLOYEES** Employee's who are not subject to the Fair Labor Standards Act (FLSA).

Administrative and Professional employees do not earn state compensatory time or FLSA overtime.

**EXEMPT CLASSIFIED EMPLOYEES** Employee's who are not subject to the Fair Labor Standards Act (FLSA).

Classified employees who are exempt from the FLSA overtime provisions do not accrue overtime for time worked in excess of 40 hours per week. However, such employees may be eligible for state compensatory time off accruable only as straight time for time worked in excess of 40 hours per week. It is solely up to the discretion of the supervisor to grant state compensatory time. Earned state compensatory time will not be paid in lieu of time off. Therefore, if a supervisor grants state compensatory time, he/she must allow the employee to take the time off within 12 months from the date the state compensatory time was earned.

Section 659.016(b) of the Texas *Government Code* contains the following language:

*When the sum of hours worked plus holiday or other paid leave taken by a full-time employee during a work week exceeds 40 hours, and not otherwise, the employee may be allowed to accrue compensatory time for the number of hours that exceeds 40 hours. When the sum of hours worked plus holiday or other paid leave taken by a part-time employee during a work week exceeds the number of hours that the part-time employee is designated to work during the work week, and not otherwise, the employee may be allowed to accrue compensatory time for the number of hours that exceeds the number of hours that the employee is designated to work during the work week. The compensatory time must be taken during the twelve (12) months period following the end of the work week in which time is accrued.*

TAMU System Regulation 31.01.09 requires that the employee's supervisor authorize in advance all state compensatory time to be earned by the employee. This authorization must be in writing from the supervisor to the employee granting specific hours of state compensatory time on or over a specific date/period for a particular project. The employee's supervisor must also authorize in advance all state compensatory time off to be taken by the employee. When possible, state compensatory time should be taken within the fiscal year in which it is earned.

To ensure consistent application of institutional policy and compliance with applicable provisions of TAMU System Regulation 31.01.09 (Overtime), state compensatory time that is authorized for any exempt employee must be promptly recorded by the supervisor by the end of the work week in which the state compensatory time is earned. Time reports are available in the Forms Library under the Business Affairs web page. These compensatory time records must be maintained for a minimum of 48 months and must be readily available for review or for audit within each "exempt" employee's academic or administrative unit. Compensatory time records must be maintained by the department and will be subject to audit.

**NON-EXEMPT CLASSIFIED EMPLOYEES** Employee's who are subject to the Fair Labor Standards Act.

Section 659.015(b) of the Texas Government Code states:

*The employee is entitled to compensation for overtime as provided by federal law and this section. To the extent that this section and the federal law prescribe a different rule for the same circumstance, federal law controls without regard to whether this section or federal law prescribes a stricter rule.*

A non-exempt employee who is required to work hours in excess of 40 hours in a work week is entitled to compensation for the excess hours. Overtime is computed on actual hours worked and paid leave time (i.e. vacation, sick leave, and sick leave pool) is not counted as hours worked for the purpose of computing overtime. The employee's supervisor must authorize in advance all compensatory time to be earned by the employee. This authorization must be in writing from the supervisor to the employee granting specific hours of compensatory time on or over a specific date/period for a particular project. The employee's supervisor must also authorize in advance all compensatory time off to be taken by the employee. Compensatory time shall be taken within the fiscal year in which it is earned.

To ensure consistent application of institutional policy and compliance with applicable provisions of TAMU System Regulation 31.01.09 (Overtime), compensatory time that is authorized for any non-exempt employee must be promptly recorded by the supervisor by the end of the work week in which the compensatory time is earned. Time Reports are available in the Forms Library under the Business Affairs web page. These compensatory time records must be maintained for a minimum of 48 months and must be readily available for review or for audit within each "non exempt" employee's academic or administrative unit. Compensatory time records must be maintained by the department and will be subject to audit.

Section 659.015(c) grants the agency the following options:

- (1) the agency allowing or requiring the employee to take compensatory time off at the 1 1/2 hours off for each hour of overtime; or
- (2) at the discretion of the employing agency, in cases in which granting compensatory time off is impractical, the employee receiving pay for the overtime at the rate equal to 1 1/2 times the employee's regular rate of pay.

#### Accrual Compensatory Limitations

The accrual limitation for personnel engaged in public safety or emergency response activities is 480 hours; and the accrual limitation is 240 hours for all other categories of employees. (The 480 hour limit represents 320 hours of actual overtime worked times one

and one-half, and the 240 hour limit represents 160 hours of actual overtime worked times the one and one-half rate.)

Such compensatory time off shall be granted at a mutually convenient date and time during the twelve month period following the end of the work week in which such compensatory time is accrued. It is recommended that the compensatory time is taken within the same fiscal year in which it was earned.

### **Assigned Duty Point for Exempt and Non-exempt Employees**

State law specifically prohibits the accrual of compensatory time for any state employees at any location other than the employee's regular place of employment or duty point. This provision is contained within the Government Code, Sec. 659.018 as follows:

*Except under circumstances specified in the General Appropriations Act, an employee of a state agency as defined by Section 658.001 may not, for hours worked during any calendar week, accumulate compensatory time off under Section 659.0150 or 659.016 to the extent that the hours are attributable to work performed at a location other than the employee's regular or temporarily assigned place of employment.*

Once the employee's compensatory time is earned and recorded by the supervisor, the same recording document should be used to record compensatory time off that is subsequently taken by the employee and approved by the employee's supervisor. **An employee's personal residence may not be considered the employee's regular or temporarily assigned place of employment for purposes of earning/accruing compensatory time.**

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Following are some of the frequently asked questions concerning FLSA overtime, state compensatory time, and payroll status.

#### **FREQUENTLY ASKED QUESTIONS:**

**1. Are Administrative and Professional employees exempt from FLSA?**

Yes. At PVAMU, all employees classified as Administrative and Professional are considered to be exempt from payment of FLSA overtime, and are also exempt from the earning of and/or payment of compensatory time.

**2. How do I know if a Classified Employee is exempt or non-exempt?**

Refer to the Compensation Plan found in the Policy Library under Business Affairs web page.

**3. Does an employee eligible to earn FLSA overtime accrue such FLSA overtime if they are employed less than 100% time?**

An employee will not accrue FLSA overtime until they have actually worked in excess of 40 hours in a designated work week. An employee may accrue straight-time or state compensatory time for each hour worked in excess of their normal weekly appointment. For instance, a halftime employee who normally works 20 hours per week will accrue 10 hours of state compensatory time if that employee actually works 30 hours during a week.

**4. What happens if I work on a holiday?**

In most cases, exempt and non-exempt employees working eight (8) hours on a holiday will receive eight (8) hours of compensatory time. Neither the State of Texas nor PVAMU have any provisions for double-time, or any other type of special payment for work performed on a holiday. If a nonexempt classified employee has already completed 40 hours of work during a work week and works a holiday during that work week, then FLSA overtime at time and one-half would be paid for all hours worked in excess of 40.

**5. I am a non-exempt employee. May I be paid for my FLSA compensatory time?**

Unused accumulated compensatory time hours shall be paid to the employee immediately upon the close of the twelve-month period following the end of the workweek in which time was earned. Once an employee's accrual exceeds the maximum hours of accumulated FLSA "comp time", the individual must be paid for each hour over the maximum.

**6. If I leave PVAMU, will I be paid for earned, but unused compensatory time?**

Upon separation from employment, non-exempt classified employees should be paid for all unused FLSA overtime compensatory time. Employees will not be paid for any accumulated state compensatory time.

**7. What happens to my accrued compensatory time if I transfer between departments at PVAMU?**

Upon transferring to another department within PVAMU, the surrendering department must pay out all compensatory time.

**8. I typically come in about 15 minutes early each day and leave at 5:15 p.m. Usually, I close my door during my lunch hour and work for 30 minutes or so. Should this count as FLSA overtime?**

Prior written approval must be obtained from the employee's immediate supervisor and/or department head before overtime may be worked. Permitting overtime to be worked is the same as ordering or authorizing it. In this example if the supervisor is aware that the employee works through lunch, starts early or stays late, and exceeds 40 hours per week, the supervisor would be responsible for compensating the employee for that overtime. In this case the employer has a responsibility to tell the employee that he/she may not work during lunch hour or during breaks.

xc: Dr. George C. Wright