

## OVERTIME FOR NON-EXEMPT STAFF EMPLOYEES

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### A. Purpose

The purpose of this policy is to set forth guidelines for the administration of overtime provisions of the Fair Labor Standards Act of 1938, as amended (FLSA), for non-exempt employees of The University of Texas Rio Grande Valley (UTRGV).

### B. Persons Affected

This policy applies to all non-exempt staff employees of UTRGV.

### C. Policy

It is UTRGV policy to comply with the overtime provisions of the Fair Labor Standards Act (FLSA) and corresponding Texas laws. Overtime for non-exempt staff employees must be pre-approved in accordance with this policy. Temporary non-exempt staff employees are not permitted to earn overtime from UTRGV.

### D. Procedures

#### 1. *Overtime to be worked:*

Except in unusual circumstances dictated by UTRGV operations, the work activities of non-exempt staff employees shall be organized so they are not required to work more than 40 hours within a workweek.

#### a. Overtime Accrual

- i. Any overtime anticipated or required of a non-exempt staff employee or group of staff employees must have the prior approval of management.
- ii. A Request for Overtime Authorization must be completed by the immediate supervisor and be forwarded through management, up to the department head. The form can be found under the forms tab on the Office of Human Resources website.
- iii. The department head will return the approved or disapproved authorization form to the immediate supervisor. The immediate supervisor must retain the authorization form in the department's employee file in accordance with UTRGV's records retention requirements (see HOP ADM 10-102, Records Management and Retention). If the overtime request is approved, the authorization form must be readily available for review or audit upon request. Overtime approved and earned by a staff employee will be certified by the immediate supervisor in UTRGV's official Time Entry System.
- iv. Unauthorized accrual of overtime is prohibited. Violations of this policy will be dealt with as a performance matter and may warrant disciplinary action.

- v. Overtime may be accrued only for work performed at the staff employee's regular or temporarily-assigned place of employment. A staff employee's personal residence is not considered to be a regular or temporarily-assigned place of employment without the prior written authorization of the President or designee.
  - vi. Reimbursements for approved overtime expenses due to the staff employee's department (e.g., by an event or other project account) should be handled by the staff employee's department and the reimbursing department through UTRGV interdepartmental transfer procedures.
- b. On-call Time
- i. A staff employee whom UTRGV requires to remain on call on UTRGV property or so close that he or she cannot use the time effectively for his or her own purposes is working while "on call." However, a staff employee whom UTRGV does not require to remain on UTRGV property but who is merely required to leave word where he or she may be reached is not working while "on call."
  - ii. Additional constraints on the staff employee's freedom may require this time to be compensated under the FLSA.
- c. Home to Work in Emergency Situations
- i. If UTRGV orders a staff employee to return to his or her regular or temporarily-assigned place of employment on a day or during hours outside of the staff employee's basic workweek, UTRGV shall compensate the staff employee at the appropriate rate of pay for at least 2 hours in accordance with Subsection D.5 below, even if the actual time worked is less than 2 hours. The actual time worked will include the time of travel from and to the staff employee's residence. An emergency situation is defined as an unscheduled or unforeseen circumstance or a resulting state that requires immediate action.
  - ii. Immediate supervisors must verify that the situation could not wait until scheduled working hours and that an emergency response was necessary.
2. *Use of Earned Overtime:*
- a. A non-exempt staff employee may not use earned overtime unless the staff employee's immediate supervisor has granted prior approval. The immediate supervisor may determine the method of communication.
  - b. To the extent practicable, UTRGV should accommodate a staff employee's request to use earned overtime, in accordance with Subsection D.5.a and as long as the use will not disrupt UTRGV operations.
  - c. Non-exempt staff employees who are on military leave should contact the Office of Human Resources, for further instruction on the use of overtime time.
3. *Recordkeeping for Overtime:*

- a. Non-exempt staff employees must record all authorized overtime hours worked and hours taken off in UTRGV's official Time Entry System.
4. *Cap on Overtime Balances:*
- a. Non-exempt staff employees may not accumulate more than 240 hours of overtime credit. Since FLSA overtime is accumulated at time and one-half, this limitation is 160 hours of actual overtime work (160 hours of overtime work x 1.5 = 240 hours).
  - b. Non-exempt staff employees engaged in a public safety activity or an emergency response activity in accordance with 29 U.S.C. § 207(o) (3) (A) may accumulate up to 480 hours of overtime credit. Since FLSA overtime is accumulated at time and one-half, this limitation is 320 hours of actual overtime work (320 hours of overtime work x 1.5 = 480 hours).
  - c. Earned overtime hours do not expire.
  - d. UTRGV shall pay a non-exempt staff employee for the number of approved overtime hours that the staff employee works that cause the staff employee to exceed the maximum overtime credit that he or she may accumulate under this policy.
5. *Compensation of Overtime:*
- a. UTRGV will compensate overtime earned by non-exempt staff employees as follows:
    - i. The staff employee must take off authorized overtime worked at the rate of 1.5 hours for each hour over 40 hours that he or she physically worked during the workweek. Note: UTRGV's official Time Entry System will display banked balances as converted overtime hours, i.e., 1.5 times basis.
    - ii. The staff employee must take off authorized overtime worked within 6 months after the end of the workweek in which it was worked. Overtime not taken off within the required time period must be paid at 1.5 times the staff employee's regular rate of pay from departmental resources. Staff employees engaged in a public safety activity as defined in this policy must take off authorized overtime worked within 12 months after the end of the workweek in which it was worked. Note: UTRGV's official Time Entry System will display banked balances as converted overtime hours, i.e., 1.5 times basis.
    - iii. When taking leave, a staff employee must use and exhaust accrued overtime before using accrued vacation leave.
    - iv. The immediate supervisor retains the right to determine a staff employee's work schedule during any workweek to permit the staff employee to take off banked overtime hours.

- v. When a staff employee's status changes from non-exempt to exempt, the staff employee's overtime balance will be paid to the staff employee by the department in which the overtime was earned.
  - vi. The appropriate Vice President or designee of the department may approve payment to the staff employee(s) for earned overtime in lieu of time off as required by Subsection D.5.a.ii and before the end of the 6-month or 12-month periods as applicable and as required in Subsection D.5.a.ii. A Request for Overtime Payment must be completed by the immediate supervisor and approved and be forwarded through management, up to the appropriate Vice President or designee of the department.
  - vii. If payment is approved, the appropriate Vice President or designee of the department will forward the payment request form to the Payroll Office. If payment is not approved, the appropriate Vice President or designee of the department will return the payment request form to the immediate supervisor.
  - viii. Exceptions to this policy must be made prior to the start of the fiscal year through a request to the Executive Vice President for Finance and Administration or designee.
6. *Transfers/Separations of Employment:*

A non-exempt staff employee's overtime balance must be paid when the staff employee separates employment with UTRGV or transfers to another state agency. The overtime balance must be paid to the non-exempt staff employee who transfers from one department to another. Overtime will be paid by the department in which the overtime was earned by the staff employee.

#### **E. Definitions**

1. Department Head - A person designated as the department head by a divisional authority, a director, college dean, division vice president, or the President, as applicable.
2. Emergency Response Activity - This is an activity that includes the dispatching of emergency vehicles and personnel, rescue work and ambulance services. An employee must regularly engage in emergency response activities to be covered under the 480 hours of overtime credit cap.
3. Exempt Employees - Employees appointed to executive, professional, administrative, or certain computer-related positions that are not subject to the minimum wage or overtime provisions of the FLSA. Whether a position is exempt depends upon its primary job duties and compliance with statutory salary requirements. The Office of Human Resources will follow FLSA regulations and guidelines to determine whether a position is exempt.
4. Fair Labor Standards Act (FLSA) - The federal law (29 U.S.C. §§ 201-219) that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees.
5. Hours Worked - Any hours that UTRGV requires or permits an employee to work.

6. Non-exempt Employee - Employees appointed to positions which do not fall under one of the exemptions found in the FLSA and whose positions are therefore subject to all provisions of the FLSA, including the overtime provisions. This includes regular and temporary (includes direct wage and work-study employees) staff employees.
7. Overtime - When the sum of hours a staff employee physically works during a workweek exceeds 40 hours. Overtime is earned on a one and one-half (1.5) time basis.
8. Overtime Credit - The number of hours computed by multiplying the number of overtime hours a staff employee works by one and one-half (1.5).
9. Public Safety Activity - In this policy, an employee engaged in a public safety activity means a person engaged in law enforcement, firefighting or related activities. A person engaged in law enforcement activities is one who:
  - a. is a uniformed or plainclothes member of a body of officers and subordinates who are empowered by state statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes,
  - b. has the power to arrest, and
  - c. is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics. Security guards, dispatchers, radio operators, and other civilian employees of law enforcement are excluded from this definition.
10. Staff Employee - An employee of UTRGV whose position is not held by faculty appointment.
11. Supervisor - A faculty member or employee who has direct or indirect supervisory, teaching, evaluation or advisory authority over an employee or student.
12. Workday - A 24-hour period beginning at 12:01 a.m. and ending at the next 12:01 a.m.
13. Workweek - A fixed and recurring period of seven consecutive workdays, which begins at 12:01 a.m. each Monday through 12 midnight on the following Sunday.

**F. Related Statutes or Regulations, Rules, Policies, or Standards**

[Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Sections 201-219](#)

[Fair Labor Standards Act of 1938, Title 29 Section 553](#)

[Texas Government Code Chapter 659, Compensation](#)

[Handbook of Operating Procedures, ADM 10-102, Records Management and Retention](#)

[Request for Overtime Authorization Form](#)

**G. Dates Reviewed or Amended**

June 13, 2018 – Amended policy approved