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## STATE COMPENSATORY TIME (EXEMPT AND NON-EXEMPT EMPLOYEES)

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### A. Purpose

The purpose of this policy is to provide for the administration of state compensatory time for eligible employees of The University of Texas Rio Grande Valley (UTRGV).

### B. Persons Affected

This policy applies to both exempt and non-exempt employees, as defined by the Fair Labor Standards Act of 1938, as amended (FLSA). It does not apply to faculty employees or those positions that require student status as a condition of employment.

### C. Definitions

#### 1. Administrative and Professional Employee (A&P)

An employee who serves at the pleasure of the President and is considered an at-will employee. The employee must meet one of the criteria listed below:

- a. Has primary responsibility for the management of multiple departments or operating units with the primary focus on strategic and tactical business planning and development, or
- b. Has responsibility for the management and operation of a department or unit within a department and performs one or more of the following: development and administration of policies, programs and internal procedures; development and maintenance of fiscal systems and operations; strategic and tactical business planning and development; facilities planning; recruitment, supervision, and development of professional and support staff, or
- c. Performs duties solely or predominantly of a recognized profession and/or State-licensed profession requiring an advanced degree such as lawyers, physicians, veterinarians, scientists and engineers, or
- d. Has primary responsibility for the creation, development, implementation and maintenance of programs relating to various significant institutional endeavors, or
- e. holds a position such as that of a professional librarian, which is excluded by law from the Classified Service.

2. 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.

3. 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.

4. Hours Worked - Any hours that UTRGV requires or permits an employee to work.
5. Non-exempt Employees - 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.
6. Staff Employee - An employee of UTRGV whose position is not held by faculty appointment.
7. State Compensatory Time - Paid leave that a non-exempt staff employee accrues when the sum of hours the staff employee works during a workweek, plus the holiday or other paid leave hours the staff employee takes during that workweek, exceeds 40 hours. State compensatory time is earned on a straight (hour-for-hour) time basis.
8. Workday - A 24-hour period beginning at 12:01 a.m. and ending at the next 12:01 a.m.
9. Workweek - A fixed and recurring period of seven consecutive workdays, which begins at 12:01 a.m. each Monday.

#### D. Policy

UT Rio Grande Valley permits eligible employees to earn and use state compensatory time in accordance with state law.

#### E. Procedure

##### 1. Earning of State Compensatory Time.

State compensatory time is earned when the total number of hours recorded on the weekly timesheet as worked plus the total number of hours of paid leave or paid holidays exceeds 40 hours in one workweek. State compensatory time is earned after the time for the entire workweek is recorded. State compensatory time is earned on a straight time, hour for hour, basis. State compensatory time can be earned by both exempt and non-exempt employees.

##### a. State Compensatory Time for Exempt Employees.

- i. Full-time exempt employees may not be paid for earned state compensatory time.
- ii. Part-time exempt employees may accrue state compensatory time for the number of hours that exceed the hours for which they are appointed, if the hours worked and hours of other paid leave or paid holiday time exceed the number of hours for which he or she is appointed. A part-time exempt employee who works hours in excess of their appointed work hours can either be paid for the hours worked or earn state compensatory time.

- b. State Compensatory Time for Non-exempt Employees.
  - i. An occasion may occur when a full-time non-exempt employee works more than 40 hours in a workweek and the total hours worked, plus hours of paid leave or paid holidays, exceeds 40. To determine if the employee has earned any state compensatory time, subtract the FLSA overtime hours worked from the total hours recorded. The employee receives state compensatory time for the remaining hours over 40. A non-exempt employee does not receive both FLSA overtime pay and state compensatory time for the same hours.
  - ii. Full-time non-exempt employees may be paid for state compensatory time hours when the taking of earned state compensatory time would be disruptive to normal teaching, research, or other critical functions.
  - iii. Part-time non-exempt employees may not accrue state compensatory time if the hours worked and hours of other paid leave or paid holiday time do not exceed 40 in a workweek. Part-time non-exempt employees must be paid for the hours worked over their appointed work hours; they may not accrue state compensatory time.

2. *State Compensatory Time Earned on Holidays.*

- a. An employee who is eligible for holiday pay and works on a holiday will receive state compensatory time for hours worked on the holiday.
- b. Accrued holiday state compensatory time must be used prior to non-holiday state compensatory time.
- c. An employee may be paid for state compensatory time earned on a holiday if it is determined that allowing compensatory time off would disrupt normal teaching, research, or other critical functions.
- d. An employee whose employment terminates prior to using compensatory time earned on holidays may have their employment extended to allow for use of such time.

3. *Earning State Compensatory Time.*

- a. Any state compensatory time anticipated or required must have the prior approval of management. The immediate supervisor may determine the method of communication.
- b. An employee may not accrue state compensatory time without the appropriate immediate supervisor's approval.
- c. Written authorization must be completed by the immediate supervisor and be forwarded through management, up to the appropriate Vice President or designee of the department.

- d. The appropriate Vice President or designee of the department will return the approved/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 records retention requirements (see HOP ADM 10-102, *Records Management and Retention*). If the state compensatory time request is approved, the authorization form must be readily available for review, inspection, or audit upon request. State compensatory time approved and earned by an employee will be certified by the immediate supervisor in UTRGV's Time Entry System.
  - f. Unauthorized accrual of state compensatory time is prohibited. Violations of this policy will be dealt with as a performance matter and may warrant disciplinary action.
  - g. State compensatory time may be accrued only for work performed at the employee's regular or temporarily-assigned place of employment. An employee's personal residence may be considered the regular or temporarily assigned place of employment and he or she may earn state compensatory time for work performed at such residence, subject to prior approval by the employee's dean, director, or equivalent administrative officer hereby authorized to implement this subsection as the President's designee.
4. *Use of Earned Compensatory Time.*
- a. Administrative and professional employees may use up to a maximum of 20 hours of state compensatory time in a workweek with prior approval of management.
    - i. Use of 20 hours per week of state compensatory time cannot exceed two consecutive workweeks.
    - ii. Use of state compensatory time during a workday or a workweek can be augmented by the use of other accrued and available leave.
  - b. Classified staff can use up to 40 hours of state compensatory time in a workweek with prior approval of management.
    - i. Use of 40 hours per week of state compensatory time cannot exceed two consecutive workweeks.
    - ii. Use of state compensatory time during a workday or a workweek can be augmented by the use of other accrued and available leave.
  - c. Employees who are on military leave should refer to HOP ADM 4-607, Military Duty Leave, for further instruction on the use of compensatory time.
5. *Cap on State Compensatory Time Balance.*
- An employee's state compensatory time balance cannot exceed 144 hours or the employee's current sick leave balance, whichever is higher. A nonexempt employee will be paid at the employee's regular rate of pay for state compensatory time that would cause the employee to exceed this cap.

6. *Loss of Unused State Compensatory Time Balances.*

Under state law, an employee must use state compensatory time, including holiday compensatory time, within the 12 months following the end of the workweek in which it was earned, or it lapses.

- a. If an employee wishes to use state compensatory time that may soon lapse, the employee may submit a written request for permission to use the time to their supervisor at least 90 days before the compensatory time will lapse. The supervisor should approve in writing the employee's request or provide the employee with an alternate date on which the employee may use the compensatory time.
- b. State compensatory time must be both requested and used before the date it is due to lapse. Supervisors are encouraged to accommodate, to the extent practicable, the employee's use of state compensatory time before it lapses.

7. *Transfers/Separations of Employment.*

- a. An employee's state compensatory time balance will transfer with the employee from one department to another. Department supervisors should discuss state compensatory time balances with an employee being considered for a position in their department.
- b. Unused state compensatory time balances will not transfer to or from another Texas state institution or agency.
- c. Unused state compensatory time balances will not be paid when an employee separates employment with UTRGV.
- d. With prior supervisory approval, an employee separating from UTRGV may use up to 40 hours of state compensatory time during his or her last week of employment with UTRGV.
- e. The estate of a deceased employee will not be paid for the employee's earned, unused state compensatory time.

F. **Relevant Federal and/or State Statute(s), Board of Regents' Rule(s), UTS Policy(ies), and/or Coordinating Board Rule(s)**

Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Sec. 201-219

*Texas Government Code* Sections 659.015-.016, 659.018, 659.022.023

*Texas Government Code* Sections 662.005(b); 662.007

ADM 4-406 Overtime for Non-Exempt Staff Employees

A Request for State Compensatory Authorization Form