GUIDELINES FOR COMPENSATORY LEAVE AND OVERTIME PAY

FAIR LABOR STANDARDS ACT REVISIONS

(DEPARTMENT) – TEXAS A&M UNIVERSITY

**SUMMARY**

The changes to the minimum salary test of the Fair Labor Standards Act (FLSA) will have a significant effect on many of the professionals in [DEPARTMENT NAME]. To help ensure these changes are implemented with minimal problems and to establish consistent policies across the department, the following guidelines have been developed to address specific questions that may arise. Employees transitioning from exempt to non-exempt status are encouraged to complete TrainTraq course **#2112755: Comp Time Issues for Employees**. This training explains the essentials of the FLSA and how it affects working time. Further resources are listed at the end of this document.

**FLSA OVERTIME**

Federal (or FLSA) overtime and compensatory (comp) time are earned when a non-exempt employee actually works more than 40 hours in a single work week and is earned at 1.5x the normal rate. [DEPARTMENT] non-exempt employees will accrue federal comp time when they work overtime. Employees who have hours accrued in their federal comp time bank may be required to use their FLSA comp time before they request vacation leave. Additionally, supervisors may require employees to use federal comp time, even if they have not requested time off. [DEPARTMENT] will pay out federal comp time balances at the end of each fiscal year, per Texas A&M System recommendation.

***OR***

Federal (or FLSA) overtime and compensatory (comp) time are earned when a non-exempt employee actually works more than 40 hours in a single work week and is earned at 1.5x the normal rate. [DEPARTMENT] non-exempt employees will be paid for overtime worked. Non-exempt employees may request to receive federal comp time instead of receiving pay for those hours. Employees who have hours accrued in their federal comp time bank may be required to use their FLSA comp time before they request vacation leave. Additionally, supervisors may require employees to use federal comp time, even if they have not requested time off. [DEPARTMENT] will pay out federal comp time balances at the end of each fiscal year per Texas A&M System recommendation ***OR*** [DEPARTMENT] will determine when federal comp time balances will be paid out.

**STATE COMP TIME**

State (and Holiday) comp time is accrued when the combined total of hours actually worked plus paid absence (eg, sick leave or vacation leave) exceeds 40 hours in one work week and is earned at the normal rate. State and Holiday comp time must be used within 12 months from when it is accrued or it expires; it cannot be paid out, except in very limited situations.

**DEPARTMENT WORK SCHEDULE**

[DEPARTMENT] standard business schedule is M-F, 8:00 am – 5:00 pm. The normal daily schedule will be 8 hours of work time, and one hour (unpaid) lunch. This represents a standard 40 hour week of paid, regular time.

Lunch is defined as time when the employee is relieved from all job duties and is free to leave the work area. Employees that work during the lunch break must be paid for that time.

After hours, staff are not to answer emails unless otherwise instructed by their supervisor as time spent reviewing and responding to these emails may become work time.

It is acknowledged that during peak times of the year, the demands on staff cannot be completed within the regular 40 hour week. Employees that anticipate overtime hours in a given week should discuss projected work and hours with the supervisor ahead of time and maintain communication of ongoing work time during these periods.

A flexible schedule may be arranged and is intended to last at least two consecutive months. Flexible schedules have to be pre-approved by the supervisor and must be compliant with [University rules](http://employees.tamu.edu/compensation/flexible-comp/schedules/). Employees requesting a flex schedule must complete the [Bi-Weekly (hourly) Employee Flexible Work Schedule Request Form](http://employees.tamu.edu/media/293809/580FlexAppHourly.pdf).

Both [Wellness Release Time](http://employees.tamu.edu/benefits/leave/wellness-release-time/) and [Education Release Time](http://employees.tamu.edu/benefits/leave/educational/) will be compensable within University guidelines. Wellness Release time counts as work towards FLSA overtime, but Education Release time does not. Wellness Release Time cannot exceed one and a half hours in any given week and must be taken in three separate 30-minute periods; these three periods cannot be combined or carried over. The combination of Wellness Release Time and Education Leave cannot exceed [NUMBER OF HOURS DETERMINED BY DEPARTMENT] hours in any given week.

**TRAVEL**

The rules governing travel and what time can be used toward FLSA, State or Holiday comp time will be subject to University rules. Supervisors and non-exempt employees should collaborate in advance of a trip to identify what should count as working time when the employee has business travel. Supervisors and employees should review the itinerary, conference/meeting schedule and other materials as well as actual travel arrangements and times. Both employee and supervisor should document in writing projected working hours, including travel time and identify how any hours over 40 in a work week will be handled: whether it will be paid, banked in the employee’s comp time bank or if the employee’s work schedule will be adjusted to avoid or minimize the overtime.

Employees will be considered working a full-time, regular 40-hour work week while at their destination. FLSA rules apply to travel whether domestic or international; the primary difference is between same day and overnight travel.

Same Day Travel

A non-exempt employee (whether driver or passenger) traveling to another city on University business and returning in the same day will be considered to be in a working status during all travel hours; unless all travelers meet at a central point to depart, travel time will be reduced by the time required for the employee’s normal daily commute and any rest/meal breaks.

Overnight travel

1. Non-exempt employees *traveling as a passenger* on University business that includes an overnight stay will be compensated for travel time which occurs during their normal working hours or the corresponding hours on weekends or holidays. Supervisors may require employees to depart after the end of normal working hours to minimize budget impacts.
2. Non-exempt employees *traveling as a driver* will have travel time for the entire trip, regardless of when the travel occurs.
3. Travel by plane, bus, train or other conveyance is treated the same way; passengers will be in a working hours status only during their normal working hours or the corresponding hours on weekends or holidays. This includes travel to/from airports or other terminals, waiting/connection times and delays.
Note: if an employee is performing productive work during travel (eg, writing an inspection report, drafting a conference summary, etc) that time will be considered working time.

Travel across multiple time zones

1. When travelers cross multiple time zones during travel, all travel hours should be based on either the origin or destination. Once at the destination, local time will be used for setting working hours.

Conferences, receptions, tours and other activities during travel

Working time will depend primarily on the conference schedule.

* 1. Main activities on the formal conference schedule are considered working time; optional activities may or may not be considered working time and must be evaluated individually.
	2. Receptions hosted by the conference organizers or sponsors after main conference hours are most likely to be counted as working hours, *even if attendance is voluntary*; typically these are networking events and can be considered of benefit to the employer.
	3. Optional tours or cultural activities are unlikely to be considered working time.
	4. ‘Rest time’ between conference activities is not considered compensable, as long as they are at least 30 minutes in length. If the time between activities is less than 30 minutes, it will be considered working time.
	5. Weekends during a conference or other assignment that lasts more than a week away from the normal work location are not considered compensable time, even if the employee is unable to return home. If the employee performs specific work, such as preparing an activity summary, that specific period of time will be considered working time.
	6. For other activities or time periods, remember to use this qualifier – who is the primary beneficiary of the time – the employee or Texas A&M University? If it is the employee, it may not be claimed as working hours. If TAMU, then the time is considered working hours.

**RESOURCES**

Fair Labor Standard Act website, Human Resources at Texas A&M University: <http://employees.tamu.edu/compensation/flsa/>

Fair Labor Standards Act – Frequently Asked Questions: <http://employees.tamu.edu/compensation/flsa/flsa-faq/>

Working Time Issues – Frequently Asked Questions:

<http://employees.tamu.edu/compensation/flsa/working-time-faq/>

Comp Time Issues for Employees (TrainTraq #2112755)

Comp Time Issues for Supervisors (TrainTraq #2112756)