OP 70.17: Overtime

DATE: February 9, 2015

PURPOSE: The purpose of this Operating Policy and Procedure (OP) is to establish policy and procedure for overtime time.

REVIEW: This OP will be reviewed in July of even-numbered years by the managing director of Human Resources and Payroll Services with substantive revisions forwarded through administrative channels to the vice president for administration and finance and chief financial officer.

POLICY/PROCEDURE

1. Definition of Terms
   a. Non-exempt Employee
      An employee employed in a position designated as non-exempt (N) in the Human Resources Pay Plan or an employee employed on an hourly basis. Non-exempt employees are subject to the recordkeeping of the university, entitled to minimum wage, and/or overtime pay protections of the Fair Labor Standards Act (FLSA).
   b. Exempt Employee
      An employee employed on a monthly salaried basis in a position designated as exempt (E) in the Human Resources Pay Plan. An exempt employee is exempt from the recordkeeping and overtime pay protections of the FLSA.
   c. Overtime
      Hours actually worked in excess of 40 in a workweek by a non-exempt employee.
   d. Workweek
      A fixed and regularly recurring period of 168 hours, 7 consecutive 24-hour periods, beginning at 12:01 a.m. Sunday through 12:00 midnight on the following Saturday.

2. Recordkeeping Requirements
   Each non-exempt employee is required to maintain a daily record of actual hours worked and leave hours taken in Web Time Entry or with time clock entries for each pay period during which
any time is worked. The employee's supervisor is responsible for assuring that the employee complies with this requirement and will certify that the reported hours are correct.

An employee cannot be employed partially in an exempt status and partially in a non-exempt status. An employee who works partially in a non-exempt status is considered entirely non-exempt.

An employee cannot be employed in an exempt and non-exempt capacity during the same workweek. An employee in any capacity that would normally be partially exempt and partially non-exempt loses the exemption during any workweek so employed. All hours worked in all capacities must be combined to determine compensatory time entitlements.

The Fair Labor Standards Act provides that recordkeeping and overtime violations may be prosecuted criminally and the violator fined up to $10,000 for each violation. A second conviction for a violation may result in imprisonment.

3. Overtime Work

Each administrator is expected to plan, organize, and schedule activities in a manner that minimizes overtime work. When emergencies arise that require overtime work, non-exempt employees will be entitled to compensation for such work in accordance with the following guidelines:

a. The employee does not determine the work schedule.

b. An employee may not refuse an overtime assignment without a compelling reason.

c. The number of hours worked during the workweek is the basis of determining if overtime has been worked. (See OP 70.06, Employee Working Hours, sections 1.b and 3.b for additional information about workweeks.)

d. Care must be taken to avoid inadvertently working an employee in excess of 40 hours if the employee is employed by the university in more than one capacity. All time worked for the university by a non-exempt employee must be combined, and total hours in excess of 40 per workweek must be compensated. It is the responsibility of each employee to inform the current department administrator prior to accepting other Texas Tech employment, and the responsibility of the administrator to avoid unintended overtime work.

e. When a person is appointed to be paid on an hourly basis, and hours worked in excess of 40 per week are correctly submitted for the pay period, overtime will be paid on the account and at the applicable rate. When multiple jobs for the same pay period are submitted for different accounts or from different departments, overtime may first be identified as a result of combining those reports in Payroll Services.

4. Payment of Overtime - Non-exempt Hourly Employees

Non-exempt hourly employees required to work extra hours on normal workdays or on non-workdays will be paid for those hours at straight time rates, provided the total hours worked during that workweek do not exceed 40 hours.
Non-exempt hourly employees required to work more than 40 hours in any workweek are entitled to compensation for such overtime. The hours worked in excess of 40 will be multiplied by 1.5 and will be paid at the regular rate of pay plus any applicable longevity, hazardous duty, or night shift differential adjustment. Any paid leave or holiday hours taken during a workweek are not counted as hours worked in determining overtime hours worked.

In situations in which the employee has not worked more than 40 hours in a workweek, but the total hours worked plus hours of paid leave and paid holidays exceeds 40 hours, the employee will receive straight time pay for the total hours of work plus the total hours of holiday and leave time.

In situations in which the employee has worked more than 40 hours in a workweek and has taken paid leave or paid holidays in the same workweek, the employee will receive straight time pay for the first 40 hours of work plus the total hours of holiday and leave time. The employee is entitled to compensation for all hours worked in excess of 40 in a workweek. All hours worked in excess of 40 in a workweek will be multiplied by 1.5 and will be paid at the regular rate of pay plus any applicable longevity, hazardous duty, or night shift differential adjustment.

5. **Accrual and Use of Compensatory Time - Exempt Employees**

a. Full-time employees who are exempt as executive, professional, or administrative employees from the overtime provisions of FLSA are paid for the accomplishment of assigned tasks without accounting for hours worked or being entitled to overtime pay or compensatory time accrual. However, such employees may be allowed to accrue and take compensatory time off provided the department has an approved compensatory time policy and recordkeeping system.

b. In order for a policy/system to be approved it must comply with the following rules:

   (1) A written procedure must be prepared by the department, reviewed by Human Resources, and approved by the appropriate vice president, the provost, the president, or the chancellor.

   (2) Basic requirements for an acceptable system are:

   (a) Preparation and approval of a record each time an exempt employee accrues or uses compensatory time; and

   (b) Maintenance of a log for each covered exempt employee.

   These forms are subject to audit by the managing director of Internal Audit and the state auditor.

   (3) Compensatory time for exempt professionals, executives, or administrative employees is accrued at a rate not to exceed one hour for each hour actually worked in excess of 48 hours during any calendar week.

   (4) Compensatory time accrued by full-time exempt employees as a result of being required to work on a national or state holiday that does not fall on a Saturday or Sunday is not covered by this policy.
(5) FLSA exempt employees must take accrued compensatory time off during the 12-month period following the end of the workweek in which the excess hours were accrued. If an exempt employee is unable to take accrued compensatory time before the end of the 12-month period, the hours will be forfeited. An FLSA exempt employee shall not be paid for any unused compensatory time earned in this manner. Any accrued balance does not constitute a claim for reimbursement upon termination of employment or death of the employee.

(6) Employees must take accrued compensatory time, if any, prior to taking leave without pay, except when such leave without pay is due to a workers’ compensation accident or disciplinary action.

c. Part-time FLSA exempt employees may accrue compensatory time when the number of hours worked plus holiday or other paid leave taken during that workweek exceeds the number of hours that the employee was designated to work.

6. Additional Compensation

Employees exempt from the overtime provisions of FLSA may be requested to provide consulting, outreach education, and other activities within the university that are considered to be in addition to their regularly assigned duties for which additional compensation may be paid, subject to limitations set forth in this OP. Additional compensation may not be approved for non-exempt employees. Non-exempt employees must be compensated for work in excess of 40 hours in any workweek, in accordance with normal overtime payment procedures.

7. Place Where Work is Performed – Duty Point

Duty point is the primary location where duties are required to be performed. No employee, whether or not subject to FLSA, may conduct Texas Tech University business during normal office hours at any location other than the employee’s regular or assigned temporary place of employment unless the employee is traveling or has received prior written authorization from the chancellor or the president to perform work elsewhere. In no event shall an employee’s personal residence be deemed that employee’s regular or assigned temporary place of employment or duty point without the written approval of the chancellor or the president.

A request for exception should include the type of work to be performed, how the time and productivity will be monitored, how it meets the business needs of TTU to have this person work from home, and the duration for which the exception is being requested.

In accordance with provisions of the Family and Medical Leave Act (FMLA), an employee who is on FMLA leave from the university will not be granted a change of duty point.

8. Authoritative References

Fair Labor Standards Act
Texas Government Code, Section 658.010 and Section 659.018
Texas Government Code, Section 659.016
29 CFR, Chapter 825, Family and Medical Leave Act of 1993
9. **Right to Change Policy**

Texas Tech University reserves the right to interpret, change, modify, amend, or rescind this policy, in whole or in part, at any time without the consent of employees.