TEXAS STATE TECHNICAL COLLEGE SYSTEM

SYSTEM OPERATING STANDARD

No. HR.2.2.8	**Page 1 of 6**	**Effective Date: 03/28/02**
DIVISION:	**Human Resources**	
SUBJECT:	**Compensation for Overtime**	
AUTHORITY:	**Minute Order #139-91**	
SUBMITTED BY:	***Original Signed by Rich Morris***	
TITLE:	**Executive Director of Human Resources**	**Date 08/07/02**
APPROVED BY:	***Original Signed by Bill Segura***	
TITLE:	**Chancellor**	**Date: 08/07/02**

STATUS: Approved by MC 03/28/02

HISTORICAL STATUS: Updated 06/2001
Revised 01/10/95
Revised 10/01/91
Approved by BOR 09/29/91

POLICY

It is the policy of the Texas State Technical College to provide overtime compensation to employees in accordance with the Fair Labor Standards Act and State of Texas statutes.

PERTINENT INFORMATION

Fair Labor Standards Act, 29 U.S.A., Section 201 et seq, and Article V, Sec. 2 Page V-38, Senate Bill 222, 71st Legislature, OVERTIME (Appropriations Act). In situations where conflict exists between federal and state statutes, the federal statute will prevail.

As used in this system operating standard, the following definitions apply:

Compensatory Time Off: Hours during which an employee is not working, which are not counted as hours worked during an applicable workweek or other work period for purposes of overtime compensation and for which the employee is compensated at his/her regular rate.

Overtime: Working hours in excess of the regularly scheduled 40 hour workweek, for which an employee is compensated at one and one-half times his/her regular rate.

Employees subject to FLSA. A nonexempt employee who is subject to the overtime provisions of the Fair Labor Standards Act of l938, 29 U.S.A. Secs. 201 et seq. (FLSA) is entitled to compensation for overtime.
A non-exempt employee who is required to work hours in excess of 40 hours in a workweek is entitled to compensation for the excess hours either by:

1) the agency allowing (or requiring) the employee to take compensatory time off at the rate of 1-1/2 hours 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 employees regular rate of pay.

Any paid leave or holidays taken are not counted as hours worked in determining overtime hours under the preceding paragraph.

Employees of a public agency which is a state, or a political subdivision of a state, may accumulate overtime credit of not more than 160 overtime hours, which converts to 240 overtime credit hours, except that an employee engaged in a public safety activity, an emergency response activity, or a seasonal activity may accumulate not more than 320 overtime hours, which converts to 480 overtime credit hours.

Note: If overtime payment is made to an employee for accrued overtime less than the 240 or 480 hour limit, the compensation shall be paid at the regular rate earned by the employee at the time the employee receives payment.

If an employee has not worked more than 40 hours in a workweek, but the total of hours worked and hours of paid leave or paid holidays exceeds 40 hours after subtracting overtime hours worked, the employee shall be allowed equivalent time off for such excess hours.

Exceptions to the workweek overtime calculations for hospital, fire protection, and law enforcement activities shall be made in accordance with the FLSA. An agreement or understanding must be arrived at between the employer and employee before performance of the work.

Note: Effective Monday, May 27, 2002, the TSTC workweek for determining compensatory time off or overtime hours is Monday through Sunday.

EXEMPTIONS (29 U.S.A. Sec. 206 and 207)

Any employee employed in a bona fide Executive, Administrative, or Professional capacity (including any employee employed in the capacity of Academic Administrative Personnel or

Teacher in elementary or secondary schools), ... as defined in 29 CFR541 (FLSA), is considered exempt from overtime pay provisions in accordance with the FLSA. Those definitions are as follows for executive, administrative and professional employees.

Executive Employees

To qualify for the overtime exemption for bona fide executive employee, workers must as a rule, meet all these conditions:

1. Their primary duty must consist of managing the enterprise in which they're employed or a customarily recognized department or subdivision of it.
2. They must customarily and regularly direct the work of two or more other employees.
3. They must have the authority to hire or fire, or their suggestions on hiring, firing, promotions, or other changes of employee status must carry particular weight.
4. They must customarily and regularly exercise discretionary powers.
5. They must not devote more than 20% of their own hours worked in a workweek to activities that aren't directly and closely related to their exempt duties.
6. They must be paid at least $155 a week on a salary basis, exclusive of board, lodging, or other facilities.

NOTE: **Employees paid a salary of at least $250 a week and who meet the first two tests above are exempt even if they don't meet the other tests.**

Administrative Employees

To qualify for the overtime exemption for bona fide administrative employees, workers must, as a rule, meet all these conditions:

1. Their primary duty must consist of (a) performing office or non-manual work directly related to management policies or general business operations of their employer or their employers customers, or (b) performing functions in the administration of a school system or education establishment or institution, or of a department or subdivision, in work directly related to the academic instruction or training carried on there.
2. They must customarily and regularly exercise discretion and independent judgment.
3. They must regularly and directly assist a proprietor, or a bona fide executive or administrative employee, or perform under only general supervision, work along specialized of technical line requiring special training, experience, or knowledge, or execute, under general supervision, special assignments and tasks.
4. They must not devote more than 20% of their hours worked in a workweek to activities which aren't directly or closely related to their exempt administrative duties.

5. They must be paid at least $155 a week on a salary or fee bases, exclusive of board, lodging, or other facilities.

NOTE: **Employees who are paid at least $250 a week of a salary or fee basis, exclusive of board, lodging, or other facilities, and who meet the "primary duty" test described at (1) above, which includes work requiring the exercise of discretion and independent judgement, are exempt even if they don't meet the other test.**

Professional Employees

To qualify for the overtime exemption for bona fide professional employees, workers must, as a rule, meet all the following requirements:

1. Their primary duty must consist of work (a) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, or (b) original and creative in character in a recognized field or artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employees, or (c) teaching, tutoring, instructing, or lecturing, if they're employed and engaged in this activity as teachers in the school system or educational establishment or institution by which they're employed.

2. Their work must require the consistent exercise of discretion and judgement.

3. Their work must be predominantly intellectual and varied in character and its output or result can't be standardized.

4. They must not devote more than 20% of their hours worked in the workweek to activities not an essential part of and necessarily incident to their exempt professional duties.

5. They must be paid at least $170 a week on a salary or fee basis exclusive of board, lodging, or other facilities.

NOTE: **Employees paid at least $250 a week, exclusive of board, lodging or other facilities, on a salary or fee basis, and whose primary work (a) either requires advanced knowledge, or is original and creative in a recognized artistic field, or is teaching, etc., and (b) includes work requiring the use of discretion and judgement, are exempt even if other tests aren't met.**

DELEGATION OF AUTHORITY

Request for overtime work for which non-exempt employees must be paid for overtime worked in excess of the limits on accumulation, 240 hours or 480 hours, may be authorized by the Chancellor, Vice Chancellors, or Presidents for employees under their respective supervision.

Request for overtime work for which non-exempt employees are required to take compensatory time off at the rate of 1-1/2 off for each hour of overtime worked, may be authorized as

determined by the Chancellor, Vice Chancellors, or Presidents for employees under their respective supervision.

OPERATING REQUIREMENTS

Each college and the TSTC System Administration office must establish the conditions under which its employees might be asked to work overtime.

Overtime occurs only when a regular, nonexempt employee is required to work hours in excess of the standard 40 hour workweek established for the position. In scheduling employees' overtime or rescheduled work hours, the procedure in effect must be published and available to all affected employees in order to maintain fair and equitable assignments.

Full-time executive, administrative and professional employees as defined in this policy are, expected to complete their assignments without regard to the hours required to perform those duties. However, due to the nature of those assignments, the flexible work schedules required to perform the assignments, and the hours required to complete, exempt employees may be allowed time away from work without penalty to conduct personal business in accordance with the FLSA. Such time off shall be at the sole discretion of the exempt employee's supervisor. This provision is not intended nor should it be construed to be a right, entitlement, or benefit, nor is it to be a substitute for the use of annual leave or sick leave provisions in accordance with state laws and statutes and the practices and policies of the Texas State Technical Colleges.

Employees filling non-exempt positions in the Compensation Manual are permitted to work overtime only when pay or compensatory provisions satisfy Federal and State statutes cited in pertinent sections of this policy. It shall be the college practice to minimize overtime worked and the resulting compensatory time balances.

Hiring units authorized to pay overtime will identify the number of employees to be paid and must submit a payroll change notification or modification to the appropriate Office of Human Resources for the pay period the overtime is to be paid, setting up a separate pay item for overtime.

The Hiring unit shall maintain a monthly record of compensatory/overtime accruals and overtime payments. These hiring units shall submit a report to the Human Resources office of accrued compensation/overtime hours by employee for the fiscal year in the first 10 working days following the end of each fiscal year.

The Office of Human Resources shall prepare an annual report detailing by month the number of employees paid overtime and the total overtime payments by divisions during the fiscal year. Each division shall assess these data in terms of productivity goals and other management objectives.

At the time of separation from TSTC employment, overtime accruals must be taken into account and a settlement made in accordance with the option selected.

Note: **The option to select compensatory time-off or receive overtime pay remains a management decision. The decision must be made in accordance with Federal and State of Texas statutes.**

PERFORMANCE INDICATORS

1. A record keeping system is developed that tracks and documents employees overtime work.

2. Records support established audit procedures.

3. Employees are informed of conditions which require overtime work and the compensation terms.

4. Written procedures establish the methods used in assigning employees to rescheduled work period or holidays.

5. Records are maintained in accordance with the Wage and Hour Law.

6. Written procedures are established for administering overtime work and compensation in which positions initiating and approving overtime work are identified.

COLLEGE OPERATING PROCEDURE

COLLEGE		**Page 1 of**
OFFICE OF RESPONSIBILITY:		
APPROVED BY:		
TITLE:		**Date**