



INTERNAL POLICY AND PROCEDURE

TITLE: Overtime Compensation for Employees in the Classified Service

EFFECTIVE DATE: September 29, 2014

CANCELLATION: None

DIVISION: BUSINESS AND ADMINISTRATIVE AFFAIRS (BAA)

CATEGORY: Human Resources (Civil Service Employment)

RESPONSIBLE DEPARTMENT: Human Resources (L)

PROCEDURES & SPECIFIC INFORMATION

1. **Purpose**

To establish procedures for providing overtime compensation for employees in the classified service in accordance with Fair Labor and Standards Act (FLSA) requirements and [Civil Service Rules: Chapter 21, Overtime and Overtime Compensation](#).

2. **Scope and Applicability**

This policy applies to full-time Delgado employees in the classified service, excluding Commissioned Police Officers who receive overtime compensation in accordance with applicable Fair Labor and Standards Act (FLSA) regulations pertaining to Police and [Delgado Policy BAA-L09, Overtime Compensation for Commissioned Police Officers in the Classified Service](#).

3. **General Provisions**

- A. According to [Civil Service Rule 21.1, Authority of Appointing Authority to Require Performance of Overtime](#), employees in the classified service may be required by the College's Appointing Authority to work overtime.
- B. As required by [Civil Service Rule 21.2, Determination of Exempt/Non-Exempt Status of Positions](#), Delgado determines the FLSA-exempt and FLSA non-exempt status of all classified positions in accordance with FLSA regulations.

- C. In accordance with [Civil Service Rule 21.3, Authority for Compensation](#), *Non-exempt Classified Employees (Not Exempt from FLSA Regulations)* receive:
- FLSA Overtime in accordance with the [FLSA for overtime conditions that are covered by the FLSA](#); and
 - State Overtime in accordance with [Civil Service Rule 21.7 Definition of State Overtime](#) for overtime conditions not covered by the FLSA.
- Exempt Classified Employees (Exempt from FLSA Regulations)* receive:
- State Overtime in accordance with [Civil Service Rule 21.7 Definition of State Overtime](#).
- D. Non-Exempt and Exempt classified employees cannot work overtime without written justification and the prior approval of the (1) immediate supervisor and (2) intermediate supervisor, as applicable, on the [Overtime/ K-Time Leave Approval Form for Classified Employees, Form 2400/005](#). Prior to working any overtime hour, the employee must seek and receive approval as noted above; however, if the employee believes the situation to be of an emergency nature, and neither the immediate supervisor or intermediate supervisor cannot be reached, the employee may work the overtime. However, the event should be documented in writing and the overtime justified to the immediate supervisor and intermediate supervisor as soon as possible. If the immediate supervisor and/or and intermediate supervisor determine(s) that the employee's judgment about working overtime is inappropriate, the employee may be instructed that he or she may not work overtime in the future without specific prior written approval.
- E. The College's Appointing Authority may make exceptions to this policy upon presentation of sufficient justification and if the exception is in accordance with state and federal law and Civil Service Rules.

4. **Definitions of Work Period, Workday and Hours Worked**

- A. ***Work Period -***
The 40-hour work period for calculating FLSA Overtime or State Overtime is defined as Monday 12:00 a.m. through Sunday 11:59 p.m.
- B. ***Workday -***
Workday is defined in the [FLSA](#) as "the period between the time on any particular day when an employee commences his/her principal activity and the time on that day at which he/she ceases his/her principal activity."
- C. ***Hours Worked for FLSA Overtime Conditions –***
As defined in the [FLSA](#), for purposes of calculating hours worked for FLSA overtime conditions, hours worked is "all time during which an employee is necessarily required to be on the employer's premises, on duty or at the prescribed work place."

D. ***Hours Worked for State Overtime Conditions –***

State Overtime is granted to (1) Non-exempt employees for overtime conditions NOT covered by the FLSA; and (2) Exempt employees. As defined in [Civil Service Rule 21.7 Definition of State Overtime](#), for purposes of calculating hours worked for State Overtime, a day off from work due to paid leave taken or a holiday observed is considered to be a day worked.

5. **Overtime Compensation**

A. **FLSA Overtime**

In accordance with [Civil Service Rule 21.8, Compensation Rate for Non-Exempt Employees](#), Non-Exempt employees shall be compensated for FLSA Overtime by one of the following:

- Cash payment at the time and one-half rate; or
- Compensatory leave earned at the time and one-half rate.

B. **State Overtime**

As defined by [Civil Service Rule 21.7 Definition of State Overtime](#), (1) Exempt employees, and (2) Non-exempt employees not eligible for overtime under the provisions of the FLSA, State Overtime may be granted at the direction of the Appointing Authority or his designee for work performed:

- In excess of the employee's regularly scheduled workday.
- In excess of the employee's regularly scheduled work period.
- On a holiday, including designated holidays.
- During official closures.

Exempt and Non-Exempt employees shall be compensated for State Overtime in accordance with the options set forth in [Civil Service General Circular 1742, Office Closures, Special Leave and Overtime](#), which provides distinctions for overtime compensation for when the employee's office is open or declared closed as described in Section 5C.

C. **Compensation Options**

Options for overtime compensation will be in accordance with FLSA regulations and Civil Service Rules, as applicable, and based on budget availability as determined by the Vice Chancellor for Business and Administrative Affairs. (See [VCBAA Memorandum: Overtime Compensation for Classified Employees Effective 9-29-14.](#))

- (1) **When a classified employee has actually worked in excess of 40 hours in a regularly scheduled 7-day work period, the following options apply:**

Employee Status	Actual Hours Worked in Excess of 40 Hours	Options for Compensation
Non-Exempt	Employee has worked more than 40 hours in a work period. <i>(FLSA Overtime)</i>	Cash payment at time and one-half (1.5) rate; OR Compensatory Leave earned at 1.5 rate
Exempt	Employee has worked more than 40 hours in a work period. <i>(State Overtime)</i>	No overtime compensation; OR Cash payment at regular hourly rate; OR Compensatory Leave earned at hour-for-hour rate; OR Cash payment at time and one-half (1.5) rate <i>(requires approval of the Civil Service Commission)</i> ; OR Compensatory Leave earned at 1.5 rate <i>(requires approval of the Civil Service Commission)</i>

- (2) **When a classified employee has NOT actually worked in excess of 40 hours due to paid leave taken or a holiday observed, or non-emergency office closure, the following options apply:**

Employee Status	Did the work occur on a holiday or during a non-emergency office closure?	Options for Compensation
Non-Exempt	Yes <i>(State Overtime for up to 40 hours actually worked; Converts to FLSA Overtime for over 40 hours actually worked)</i>	Cash payment at time and one-half (1.5) rate; OR Compensatory Leave earned at 1.5 rate; OR Cash payment at regular hourly rate; OR Compensatory Leave earned at hour-for-hour rate

Exempt	Yes <i>(State Overtime)</i>	No overtime compensation; OR Cash payment at regular hourly rate; OR Compensatory Leave earned at hour-for-hour rate; OR Cash payment at time and one-half (1.5) rate (<i>requires approval of the Civil Service Commission</i>); OR Compensatory Leave earned at 1.5 rate (<i>requires approval of the Civil Service Commission</i>)
Non-Exempt	No <i>(State Overtime)</i>	Cash payment at regular hourly rate; OR Compensatory Leave earned at hour-for-hour rate
Exempt	No <i>(State Overtime)</i>	No overtime compensation; OR Cash payment at regular hourly rate; OR Compensatory Leave earned at hour-for-hour rate; OR Cash payment at time and one-half (1.5) rate (<i>requires approval of the Civil Service Commission</i>); OR Compensatory Leave earned at 1.5 rate (<i>requires approval of the Civil Service Commission</i>)

(3) When a classified employee is performing work ON emergency duty during official closures due to weather conditions or natural disasters, a security risk to the public safety, or similar occurrences of an extraordinary nature, the following options apply:

Employee Status	Did employee actually work in excess of 40 hours?	Options for Compensation
Non-Exempt	Yes, employee actually worked more than 40 hours. <i>(FLSA Overtime)</i>	Cash payment at time and one-half (1.5) rate OR Compensatory Leave earned at 1.5 rate

<p>Exempt</p>	<p>Yes, employee actually worked more than 40 hours.</p> <p><i>(State Overtime)</i></p>	<p>No overtime compensation; <i>OR</i></p> <p>Cash payment at regular hourly rate; <i>OR</i></p> <p>Compensatory Leave earned at hour-for-hour rate; <i>OR</i></p> <p>Cash payment at time and one-half (1.5) rate (<i>During official closures due to emergency situations approval of the Civil Service Commission is not required</i>); <i>OR</i></p> <p>Compensatory Leave earned at 1.5 rate (<i>During official closures due to emergency situations approval of the Civil Service Commission is not required</i>)</p>
<p>Non-Exempt</p>	<p>No, employee actually worked less than 40 hours.</p> <p><i>(State Overtime)</i></p>	<p>Cash payment at time and one-half (1.5) rate; <i>OR</i></p> <p>Compensatory Leave earned at 1.5 rate; <i>OR</i></p> <p>Cash payment at regular hourly rate; <i>OR</i></p> <p>Compensatory Leave earned at hour-for-hour rate</p>
<p>Exempt</p>	<p>No, employee actually worked less than 40 hours.</p> <p><i>(State Overtime)</i></p>	<p>No overtime compensation; <i>OR</i></p> <p>Cash payment at regular hourly rate; <i>OR</i></p> <p>Compensatory Leave earned at hour-for-hour rate; <i>OR</i></p> <p>Cash payment at time and one-half (1.5) rate (<i>During official closures due to emergency situations approval of the Civil Service Commission is not required</i>); <i>OR</i></p> <p>Compensatory Leave earned at 1.5 rate (<i>During official closures due to emergency situations approval of the Civil Service Commission is not required</i>)</p>

6. **Compensatory Leave Regulations**

- A. For compensatory leave payment, prior to performing overtime work classified employees must submit a signed [Statement of Agreement or Understanding: Classified Employee Compensation for Overtime Work](#), Form 2400/006, to document agreement with the compensatory leave form of compensation throughout his/her employment with the College.
- B. In accordance with [Civil Service Rule 21.6, Compensatory Leave – Crediting and Usage](#), compensatory leave credited to a classified employee may be used by the employee, with the approval of the Appointing Authority, on the date requested unless the leave will cause “unduly disruption” to the College.
- C. An employee who has been credited with compensatory leave may be required, by the Appointing Authority, to take all or part of such leave at any time.
- D. In accordance with [Civil Service Rule 21.11, Caps and Required Payment for Overtime Earned at the Hour-for-Hour Rate](#), classified employees who accrue compensatory leave at the *hour-for-hour* rate can accumulate no more than 360 hours, but not more than a total of 360 hours can be carried forward from one fiscal year to the next. However, an appointing authority may request an exception to maintain essential services necessary to preserve the life, health, or welfare of the public. This exception may ask that up to a total of 540 such hours be carried forward to the next fiscal year. Such a request is subject to approval by the Civil Service Commission.

For *non-exempt employees* whose *hour-for-hour* compensatory leave balance exceeds the cap required or granted by an exception as described above, payment must be made within 90 days after the beginning of the fiscal year for the excess compensatory leave. If payment is made, the employee’s hourly rate of pay for: (1) FLSA Overtime will be paid in accordance with FLSA regulations; and (2) State Overtime shall be calculated using the employee’s base pay plus supplement, if applicable, in accordance with [Civil Service Rules: Chapter 21.5\(a\), Basis for the Calculation of Hourly Rate of Pay for Overtime](#)

For *exempt employees* whose *hour-for-hour* compensatory leave balance exceeds the cap required or granted by an exception as described above, payment may be made within 90 days after the beginning of the fiscal year for the excess compensatory leave. If payment is made, the employee’s hourly rate of pay shall be calculated using the employee’s base pay plus supplement, if applicable, in accordance with [Civil Service Rules: Chapter 21.5\(a\), Basis for the Calculation of Hourly Rate of Pay for Overtime](#). Any excess leave not paid must be cancelled.

- E. In accordance with [Civil Service Rule 21.10, Caps and Required Payment for Overtime Earned at the Time and One-half Rate](#), *non-exempt* and *exempt* classified employees may accrue compensatory leave at the *time and one-half* rate shall accumulate *no more than 240 hours*, the maximum allowed under the [FLSA](#) for state employees not in law enforcement/fire protection/emergency response personnel positions.

Once the maximum balance of compensatory leave earned at the *time and one-half* rate is reached, any additional overtime worked must be paid to the *non-exempt* employee in cash at the time and one-half rate. For *exempt employees* whose time and one-half compensatory leave balance exceeds the cap required or granted by an exception as described in section 6D above, payment may be made within 90 days after the beginning of the fiscal year for the excess compensatory leave. If payment is made, the employee's hourly rate of pay shall be calculated using the employee's base pay plus supplement, if applicable, in accordance with [Civil Service Rules: Chapter 21.5\(a\), Basis for the Calculation of Hourly Rate of Pay for Overtime](#). Any excess leave not paid must be cancelled.

- F. The College may pay the balance of an employee's compensatory time at any time, and the rate of pay shall be calculated in accordance with [Civil Service Rules: Chapter 21, Overtime and Overtime Compensation](#).

- G. In accordance with [FLSA regulations](#) and [Civil Service Rule 21.12, Payment or Cancellation of Compensatory Leave upon Separation or Transfer](#), upon separation or transfer from classified employment at the College, the employee must be paid the higher of (1) his/her final regular rate of pay or (2) the average regular rate during his or her last three years of employment for any compensatory leave remaining when the separation/transfer occurs.

Forms:

[Overtime/ K-Time Leave Approval Form for Classified Employees](#), Form 2400/005

[Statement of Agreement or Understanding: Classified Employee Compensation for Overtime Work](#), Form 2400/006

Reference:

[Civil Service Rules: Chapter 21, Overtime and Overtime Compensation](#)

Memorandum:

[VCBAA Memorandum: Overtime Compensation for Classified Employees Effective 9-29-14](#)

Review Process:

Ad Hoc Committee on Classified Employees Overtime Policy 9/11/14
Business & Administrative Affairs Council 9/22/14

Approval:

Vice Chancellor for Business and Administrative Affairs 9/24/14