



INTERNAL POLICY AND PROCEDURE

TITLE: Overtime Compensation for FLSA Non-Exempt Unclassified Employees

EFFECTIVE DATE: August 1, 2016 (*Procedural Update 11/6/17*)

CANCELLATION: None

DIVISION: BUSINESS AND ADMINISTRATIVE AFFAIRS (BAA)

CATEGORY: Human Resources

RESPONSIBLE DEPARTMENT: Human Resources (L)

PROCEDURES & SPECIFIC INFORMATION

1. **Purpose**

To establish procedures for providing overtime compensation for unclassified employees in accordance with Fair Labor and Standards Act (FLSA) requirements.

2. **Scope and Applicability**

This policy applies to *full-time Non-Exempt Unclassified Employees* who receive overtime compensation in accordance with applicable Fair Labor and Standards Act (FLSA) regulations. [Full-time *FLSA-Exempt* Unclassified Employees receive overtime compensation in accordance with the College’s [Compensatory Leave for FLSA-Exempt Non-Faculty Unclassified Employees](#) policy.]

3. **General Provisions**

- A. In accordance with [LCTCS Policy #6.003, Leave Record Establishment and Regulations for Unclassified, Non-Civil Service Employees](#), all unclassified employees may be required by the College’s Appointing Authority to work overtime.
- B. Non-Exempt Unclassified Employees receive overtime compensation in accordance with the [FLSA](#) regulations for overtime conditions that are covered by the FLSA.
- C. Non-Exempt Unclassified 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/ Compensatory Leave Approval Form, 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 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.

- D. 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.

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

- A. ***Work Period -***
The 40-hour work period for calculating FLSA 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 Straight Overtime Conditions –***
Straight Overtime is granted to Non-Exempt Unclassified Employees for overtime conditions NOT covered by the FLSA. For the purposes of calculating hours worked for Straight Overtime, a day off from work due to paid leave taken or a holiday observed is considered to be a day worked.

6. **Overtime Compensation**

A. **FLSA Overtime**

Non-Exempt Unclassified 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. Straight Overtime

For overtime conditions NOT covered by the FLSA, Non-Exempt Unclassified Employees may be granted Straight Overtime 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.

C. Compensation Options

Options for overtime compensation will be in accordance with FLSA regulations, and based on budget availability as determined by the Vice Chancellor for Business and Administrative Affairs. (See [VCBAA Memorandum: Overtime Compensation for Non-Exempt Unclassified Employees Effective 11/6/17.](#))

(1) When a Non-Exempt Unclassified Employee has actually worked in excess of 40 hours in a regularly scheduled 7-day work period, the following options apply:

| Actual Hours Worked in Excess of 40 Hours | Options for Compensation |
|--|---|
| 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; <i>OR</i> Compensatory Leave earned at 1.5 rate |

(2) When a Non-Exempt Unclassified 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:

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

| | |
|---|--|
| <p>No</p> <p><i>(Straight Overtime)</i></p> | <p>No overtime compensation; OR</p> <p>Cash payment at regular hourly rate; OR</p> <p>Compensatory Leave earned at hour-for-hour rate; OR</p> <p>Cash payment at time and one-half (1.5) rate <i>(requires approval of the College Chancellor)</i>; OR</p> <p>Compensatory Leave earned at 1.5 rate <i>(requires approval of the College Chancellor)</i></p> |
|---|--|

(3) When a Non-Exempt Unclassified 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:

| <p>Did employee actually work in excess of 40 hours?</p> | <p>Options for Compensation</p> |
|---|--|
| <p>Yes, employee actually worked more than 40 hours.</p> <p><i>(FLSA Overtime)</i></p> | <p>Cash payment at time and one-half (1.5) rate</p> <p>OR</p> <p>Compensatory Leave earned at 1.5 rate</p> |
| <p>No, employee actually worked less than 40 hours.</p> <p><i>(Straight Overtime)</i></p> | <p>Cash payment at time and one-half (1.5) rate; OR</p> <p>Compensatory Leave earned at 1.5 rate; OR</p> <p>Cash payment at regular hourly rate; OR</p> <p>Compensatory Leave earned at hour-for-hour rate</p> |

D. **Special Compensation Provisions for Non-Exempt Unclassified Employees**

- **Unscheduled (Emergency) Office Closures/ Emergency Work Outside of Employee's Regular Work Schedule**

During unscheduled closures due to emergency conditions, including but not limited to weather, Non-Exempt Unclassified Facilities staff will generally receive overtime compensation through a cash payment on a time and one-half (1.5 rate). Additionally, Non-Exempt Unclassified Facilities staff required to perform emergency work during weekday evening/night or weekend hours *outside of the employee's regular 40-hour weekly work schedule* will generally receive overtime compensation through a cash payment on a time and one-half (1.5 rate). The College reserves the right to amend these provisions as needed.

- **Externally-Funded Events on College-Facilities**

For externally-sponsored events on the College's facilities for which Non-Exempt Unclassified Facilities staff presence is paid for by an external organization/entity or funded through external funds, compensation will generally be made through cash payment on a time and one-half (1.5) rate. As a good business practice, efforts will be made to give priority, when possible, to officers who have actually already worked a 40-hour work period. The College reserves the right to amend these provisions as needed.

- **Internal Events on College-Facilities Outside of Employee's Regular Work Schedule**

For internally-sponsored events on the College's facilities for which Non-Exempt Unclassified Facilities staff presence is necessary during weekday evening/night hours or on weekends *outside of the employee's regular 40-hour weekly work schedule*, compensation will generally be made through cash payment on a time and one-half (1.5) rate. The College reserves the right to amend these provisions as needed.

7. **Compensatory Leave Regulations**

- A. Compensatory leave credited to a Non-Exempt Unclassified Employee may be used by the employee, with the approval of the employee's supervisor, on the date requested unless the leave will cause "unduly disruption" to the College as determined by the College's Appointing Authority.
- B. 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.
- C. Non-Exempt Unclassified 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 College Chancellor.

When Non-Exempt Unclassified Employees' *hour-for-hour* compensatory leave balance exceeds the cap required or granted by an 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) Straight Overtime shall be calculated using the employee's base pay plus supplement, if applicable.

- D. Non-Exempt Unclassified 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 Unclassified Employees in cash payment at the time and one-half rate.

- E. The College may pay the balance of an employee's compensatory time at any time.
- F. In accordance with [FLSA regulations](#), upon separation or transfer from 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/ Compensatory Leave Approval Form \(Form 2400/005\)](#)

Reference:

[LCTCS Policy #6.003, Leave Record Establishment and Regulations for Unclassified, Non-Civil Service Employees](#)

Memorandum:

[VCBAA Memorandum: Overtime Compensation for Non-Exempt Unclassified Employees Effective 11/6/17](#)

Review Process:

Ad Hoc Committee on Classified Employees Overtime Compensation Policy 7/13/16
Business & Administrative Affairs Council & Assistant Vice Chancellor for Human Resources 8/1/16

Approval:

Vice Chancellor for Business and Administrative Affairs 8/1/16
Procedural Update - Vice Chancellor for Business and Administrative Affairs
Approval 11/6/17