



Angelo State University Operating Policy and Procedure

OP 52.28: Hours of Work, Overtime, and Compensatory Time

DATE: March 28, 2012

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish hours of work during the work week and overtime and compensatory time procedures to compensate employees for overtime work in accordance with the Fair Labor Standards Act.

REVIEW: This OP will be reviewed in March of even-numbered years by the director of human resources with recommended revisions forwarded through the vice president of finance and administration to the president by April 15 of the same year.

POLICY/PROCEDURE

1. Hours of Work

a. Office Hours for Staff

In accordance with the Texas Government Code, office hours for Angelo State University are 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. University offices are required to remain open with at least one person on duty during the lunch hour to accept calls, receive visitors, and conduct business. The president may adjust these hours if necessary; however, all hours worked by employees count toward the required 40 hours per week.

b. Office Hours for Faculty and Teaching Assistants

In accordance with university policy, faculty members, including part-time faculty and teaching assistants, are expected to keep regular office hours adequate to meet, confer, and counsel with students.

c. Work Week

The university work week for payroll and time keeping purposes is from Monday at 12:00 a.m. through Sunday at 11:59 p.m. Most employees work from 8:00 a.m. to 5:00 p.m. Monday through Friday. In some cases, university personnel may work shifts other than the standard 8:00 a.m. to 5:00 p.m.

Regular, full-time employees are generally required to work 40 hours per week. Hourly (non-exempt) employees who work over 40 hours will be compensated in accordance

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with the regulations under the Fair Labor Standards Act (FLSA). If a department allows or permits an hourly employee to work beyond the 40 hours, this time must be counted for compensation and overtime purposes. Departments should exercise control and enforcement to ensure that work is not performed which department management did not intend to be performed.

Typically, salaried (exempt) employees may be expected to work in excess of 40 hours during a work week depending on the nature of the job, work projects, cyclical workloads, or other departmental demands that may exist. Salaried employees are not covered by the provisions of the FLSA, therefore will not earn overtime compensation.

Refer to OP 52.09 Definitions of Employee Categories for further information regarding employee classifications.

2. Overtime Policy for Hourly Employees

It is the policy of the university that work schedules are planned and organized so that hourly employees do not work in excess of established work periods, except when demanded by operating necessities.

If overtime is unavoidable, compensation, regulated by FLSA, requires that hourly employees must be compensated for hours actually worked in excess of 40 hours during a workweek (Monday 12:00 a.m. through Sunday 11:59 p.m.). This compensation may take the form of time off or payment.

It is the practice of the university, whenever possible, to compensate employees for overtime services by granting FLSA compensatory time off. Only under exceptional circumstances, when allowing compensatory time off is impractical, will FLSA overtime compensation be paid.

a. Applicability

This policy applies to all hourly employees of the university. Only certain staff employees are non-exempt (hourly) under FLSA; refer to the *Staff Pay Plan* found on the Office of Human Resources website (http://www.angelo.edu/dept/human_resources/) to determine the FLSA classification of staff employees.

b. Overtime Provisions

The overtime provisions of the FLSA require that hourly employees who physically and actually work in excess of 40 hours in a work week must be compensated at a rate of 1.5 times the employee's rate of pay or 1.5 hours of compensatory time for each hour over 40 hours worked.

Example: An employee who works 40 hours Monday through Friday and also works on Saturday for 4 hours must be paid 40 hours straight time at the employee's regular rate of pay plus be given 6 hours (4 hours in excess of 40 times 1.5) of FLSA compensatory time.

Paid time off, such as sick leave or vacation leave, is not included in the 40 hour overtime calculation because the employee is not physically and actually working during sick or vacation leave.

Example: An employee who physically and actually works 4 eight-hour days out of the week and is on paid sick leave one day in the same workweek and then works 4 hours on Saturday would be compensated for 44 hours – all at straight time. The physical work hours are counted at 36 and the non-physical hours are 8 for a total of 44 hours. Since the physical total work hours are less than 40, the employee would get compensated at straight time and not time and a half.

Example: An employee who physically and actually works 38 hours during the normal workweek and took 2 hours of vacation and then works 3 hours on Saturday would get paid for the 2 hours of vacation and 41 hours of physical and actual work. However, the one hour worked in excess of 40 would be compensated at 1.5 which would entitle the employee to an hour and a half of FLSA compensatory time off.

c. FLSA Compensatory Time

FLSA compensatory time is the time off or hourly pay rate equal to one and a half times for hours physically and actually worked in excess of 40. Provisions regarding FLSA compensation include the following:

- (1) Employees may accrue up to 240 hours of FLSA compensatory time; since compensatory time is accumulated at time and one-half, this is only 160 hours of actual overtime work. University police officers may accrue up to 480 hours of FLSA compensatory time. Any accumulated FLSA compensatory time in excess of 240 hours (or 480 hours for University Police Officers) must be paid to the employee.
- (2) An employee who has accrued FLSA compensatory time and requests use of the time must be permitted to use the time off within a reasonable period after making the request if it does not unduly disrupt the operations of the department. Departments may require employees to use up any FLSA compensatory time balance before using vacation, sick or personal leave.
- (3) FLSA compensatory time off may be carried over from one year to the next, provided the accrual does not exceed the maximum limit of 240 hours (480 hours for University Police Officers).
- (4) Employees who have accrued, but not taken FLSA compensatory time off are paid for such overtime upon termination, death, or when compensatory time balance exceeds 240 hours figured at:
 - (a) The average regular rate received by the employee during the last three years of State employment; or,
 - (b) The final regular rate received by the employee, whichever rate is higher.
 - (c) Regular rate includes any longevity pay, hazardous pay, and benefit replacement pay (BRP).

d. State Compensatory Time (Non-FLSA Compensatory Time)

State compensatory time (Non-FLSA compensatory time) is time off or paid time for hours recorded during a workweek that includes hours worked, leave hours taken or where an hourly employee works on an official holiday. In such situations, the employee's payroll record would reflect a combination of paid leave and hours worked that exceed 40 hours but who has not physically and actually worked more than 40 hours to warrant time and a half FLSA compensatory time.

e. Provisions for Non-FLSA Compensatory Time

As in FLSA compensatory time, non-FLSA compensatory time may be granted as time off to the hourly employee.

- (1) In certain circumstances, an hourly employee may not have physically and actually worked more than 40 hours in a work week, but the total number of hours worked plus paid leave or holiday hours exceeds a total of 40. In such a case, the hourly employee is allowed equivalent time off from work for the excess hours or may be paid at straight time.
- (2) Non-FLSA compensatory time is granted as time off on a straight hour-for-hour basis or paid, with prior approval as discussed above, on a straight hourly pay rate.
- (3) Non-FLSA compensatory time must be taken during the 12-month period following the end of the workweek in which it was earned. An employee may not be paid for the unused time.
- (4) Non-FLSA compensatory time cannot be transferred from one State agency to another.
- (5) An employee must use all accrued non-FLSA compensatory time before transferring from one department to another. However, exceptions may be made if the receiving department is willing to accept the transfer of the individual with accrued equivalent leave.
- (6) Employees will not be paid for any unused non-FLSA time upon termination or death.

f. Special Provisions

(1) Attendance at Training Program, Meetings and Lectures

Generally, attendance at training or educational programs, meetings, lectures, etc. is counted as time worked if the attendance is directly related to the employee's job, if it occurs during the employee's regular working hours, and if it is required or allowed by the department.

(2) Travel Time

Travel time for job-related trips may or may not count as work time for FLSA purposes depending on the kind and time of travel involved.

(3) Home to Work for Special Assignment

Travel from home to work is an ordinary and normal incident of employment and therefore does not have to be paid. However, an hourly employee who travels to a seminar, training session, conference, etc. that lasts for a single workday must be paid for the travel time spent to the location of the special assignment.

Example: An hourly employee, who travels two hours to a seminar, attends the seminar for eight hours and then drives home for two hours must be paid for the eight hours at the seminar and the four hours of travel time (total of 12 hours). However, the employee's normal commute time to work plus any mealtime at the seminar can be deducted from the total of twelve hours.

(4) Travel As Part Of The Employee's Work During The Day

Time spent traveling as part of the employee's job must be counted as hours worked and must be paid. This would apply where the employee is required to travel from work site to work site.

(5) Overnight Travel

If an hourly employee travels to a seminar, training session or conference and leaves the day before the seminar, then only the time that is spent during the employee's regular work day must be paid.

Example: If the employee normally works from 8:00 a.m. to 5:00 p.m. and leaves for the seminar at 4:00 p.m. and arrives at the seminar at 9:00 p.m., only one hour of travel time must be paid. In this case, the travel time portion that overlaps the employee's workday (which ends at 5:00 p.m.) would be paid.

Travel time on non-working days (such as Saturday and Sunday for most employees) is also considered work time if conducted during the employee's normal work hours.

Example: If the 8:00 a.m. to 5:00 p.m. employee travels on a Saturday, the time between 8:00 a.m. and 5:00 p.m. on Saturday must be paid. Meal times can be deducted from this time period provided the employee did not perform any work during the meal time. If the travel time occurred outside of the 8:00 a.m. to 5:00 p.m. time period, then the travel time is not compensable.

g. Recordkeeping

Each hourly employee is required to maintain a daily record of actual hours worked and leave hours taken 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.

Each administrator is accountable for filing complete and accurate records of hours worked by each hourly employee under the administrator's charge. Neither an employee nor an administrator shall disregard or circumvent the recordkeeping, overtime, or compensatory time requirements of the university by instructing or permitting an employee to file incorrect forms or by any other means.

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An employee cannot be employed partially in a salaried (exempt) and partially in an hourly (non-exempt) status. An employee who works partially in an hourly status is considered to be entirely non-exempt. Each administrator appointing an employee to an hourly position is responsible for assuring that accurate records of the total hours worked by that employee are maintained.

FLSA and non-FLSA compensatory time balances must be recorded separately and must not be combined for any reason by departments.

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.