



## **HRM 60.311: OVERTIME/COMPENSATORY TIME**

### **PURPOSE:**

The purpose of this policy is to establish guidelines to comply with Federal and State laws regarding overtime and compensatory time off. The concept of hours worked is a crucial determining factor in complying with the Fair Labor Standards Act (FLSA). According to the U.S. Supreme Court, an employee must be compensated for "all time spent in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer or his business." Employees may not agree, even voluntarily, or otherwise to waive their rights to the FLSA's protection.

### **POLICY:**

To comply with the Fair Labor Standards Act, University employees, including temporary, intermittent and student employees, who hold non-exempt positions must be paid overtime at a rate of not less than one and one-half (1.5) times their regular hourly rate of pay or must be given compensatory time off at a rate of not less than one and one-half (1.5) hours for each hour of overtime worked in excess of 40 hours in a workweek.

Employees exempt from the FLSA are not paid overtime. Exempt employees within the University are expected to work the hours required to do their job in an effective and efficient manner.

### **PROCEDURE:**

Under the FLSA, overtime is defined as time worked by a non-exempt employee that exceeds 40 hours in a workweek -- a workweek being defined as 7 consecutive days (168 hours). The standard workweek at Mississippi State University begins at 12:01 a.m. on Sunday and ends at 12:00 midnight on the following Saturday. Days off may not be shifted from one week to another in order to avoid overtime compensation.

Overtime provisions also apply to those employees who may work in more than one department. Under the provisions of the FLSA, nonexempt employees must be paid overtime for hours worked over 40 in a workweek. It is the responsibility of the department in which the overtime work is performed to pay the overtime rate. Nonexempt employees who occupy more than one position within the University qualify for overtime pay unless the work is occasional or sporadic, solely at the employee's option, and is in a different capacity from which the employee regularly engages (see Additional Compensation for Additional Services in the Compensation Toolkit on the Human Resources Management web page).

## **PROCEDURE:**

HRM is responsible for collecting data and determining which positions are non-exempt and subject to overtime pay and which positions are executive, administrative, managerial, or professional and, therefore, are exempt from overtime pay. HRM is responsible for sharing this information with the department/unit heads and advising them on overtime pay matters. The department/unit head is responsible for communicating to employees at the time of employment the following:

1. whether their positions are non-exempt and eligible for overtime pay when hours worked exceed 40 per week;
2. the overtime policy and procedures;
3. how overtime hours are handled in the unit (indicate in writing in the offer letter whether paid as overtime or accrued as compensatory time); the projected extent of overtime work and the time of year it will most likely occur; and,
4. the degree to which work schedules may be modified.

## **Flexible Work Schedule**

Flexible work schedules allow employees to vary their arrival and/or departure times and must be a matter of agreement between the supervisor and the employee. For example, employees may work 10 hours on Monday through Wednesday; 5 hours Thursday; and 5 hours, Friday. If, however, at any time the hours worked exceed 40 during a workweek, the department/unit head must ensure that employees are paid overtime pay or given compensatory time off in lieu of overtime pay.

## **Overtime Pay**

Overtime pay is based on time actually worked and is calculated at the rate of one and one-half times the employee's regular hourly rate for each hour worked beyond 40 hours during each workweek from 12:01 a.m. on Sunday to 12:00 midnight on the following Saturday. In determining total overtime hours worked, hours of leave time with pay (personal and major medical leave), compensatory time off and hours taken on approved University paid holidays during the workweek are not counted as time worked in computing overtime pay. For example, employees who work 10 hours each day for three days, and take one eight-hour holiday, and take personal leave of eight hours one day during a workweek actually work 30 hours, not 46. Employees, therefore, have not worked 6 hours overtime. Employees do, however, receive their regular hourly rate of pay for all 46 hours in that workweek. Also, employees who are paid a shift differential will have that shift differential included in the calculation of their regular rate of pay.

## **Record of Hours Worked**

For all employees who occupy non-exempt positions on a full-or part-time basis, including temporary, intermittent, and student employees, a record must be maintained in the administrative unit of total hours worked by use of the official University Semi- Monthly Time Report (HRM 311d), or approved time and attendance system. It is essential that the

time report accurately reflect time worked on an hour for hour basis. Requiring employees to work extra time in excess of their normally scheduled work hours and not recording the extra time on the time report exactly as the time is worked is unlawful under the overtime provisions of the Fair Labor Standards Act.

It is the employee's responsibility to obtain approval prior to working overtime and to keep track of all hours worked.

The Semi-Monthly Time Report must be signed by the employee certifying that the number of hours contained therein is correct, and it must be approved by the supervisor and/or department/unit head. The department/unit head is responsible for maintaining the employee's Semi-Monthly Time Report within the unit, for keeping them current and on file in the administrative unit for at least three (3) years, and for making them available at all times for audit by the University's Office of Internal Audit, State or Federal Auditor(s), or HRM.

### **Compensatory Time Off**

The Fair Labor Standards Act provides an element of flexibility for state and local government employers regarding compensation for statutory overtime hours. The law authorizes a public agency to provide compensatory time (comp time) off in lieu of monetary compensation, at a rate of not less than one and one-half (1.5) hours of compensatory time for each hour of overtime worked in excess of 40 in a workweek. Whether to grant overtime pay or compensatory time off is at the discretion of the department/unit head with consideration given to budgetary resources.

The department/unit head is responsible for the administration of compensatory time off in lieu of overtime. An agreement or understanding between employees and the department/unit head must be arrived at prior to the employees' actually performing the work, as to the method to be used in compensating overtime. This agreement should be made in the letter of offer (see Employment Authorization, #[60-104](#)) or in the annual employment letter (see Contracts and Annual Pay Notification Letters, #[60-112](#)).

Employees who have accrued compensatory time must be granted compensatory time off rather than personal leave when leave is requested. However, if employees are absent from work more than one day due to illness, the employees may choose to use either major medical leave or compensatory time off.

Compensatory time off is calculated at the rate of one and one-half times the hours worked in excess of 40 hours during a workweek. Compensatory time off may accrue to a maximum of 240 hours. Once employees have accrued 240 hours of compensatory time, they must be paid for time worked over 40 hours per week that is in excess of the 240 hour maximum.

The use of accrued compensatory time must be granted to employees upon request unless the granting of such time would unduly disrupt the effective functioning of the unit. Mere inconvenience is an insufficient basis for denial of a request to use accrued compensatory time.

At the time of transfer to another unit, the transferring employee must be paid for all accrued compensatory time by the unit in which it was earned. Such payment must be made at the regular hourly rate of pay received by the employee at the time of transfer.

It is permissible for the department/unit head to pay out accumulated compensatory time by paying the employee for each hour accrued to reduce their accrued compensatory time balance. Such payment must be made at the regular hourly rate of pay received by the employee at the time of payment.

It is permissible for the department/unit head to schedule time off for each hour accrued to reduce the employees accrued compensatory time balance.

Upon separation from the University, employees must be paid for all accrued compensatory time at a rate of compensation not less than:

1. The average regular rate received by such employee during the last three (3) years of the employee's employment, or
2. The final regular rate received by such employee, whichever is higher.

Where an employee's last three (3) years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new employment. Where the final period of employment is less than three (3) years, the average rate still must be calculated based on the rate(s) in effect during such period.

### **Record of Compensatory Time Earned/Taken**

The department/unit head is responsible for maintaining records of compensatory time earned and taken by or paid to employees within the unit, for keeping them current and on file in the administrative unit for at least three (3) years, and for making them available at all times for audit by the University's Office of Internal Audit, State or Federal Auditor(s), or HRM.

The official University form for recording compensatory time earned and taken is the

Compensatory Time Record form:

<http://www.hrm.msstate.edu/forms/>

REGULATION/LAW

Fair Labor Standards Act

### **REVIEW:**

The Chief Human Resources Officer is responsible for review of this policy as needed, but no less frequently than 4 years.

**REVIEWED BY:**

/s/ Judy Spencer  
Chief Human Resources Officer

10/06/2016  
Date

/s/ Judy Bonner  
Provost and Executive Vice President

10/10/2016  
Date

/s/ Timothy N. Chamblee  
Assistant Vice President and Director  
Institutional Research and Effectiveness

10/12/2016  
Date

/s/ Joan Lucas  
General Counsel

10/12/2016  
Date

**APPROVED:**

/s/ Mark Keenum  
President

11/03/2016  
Date