

Overtime and Compensatory Time Frequently Asked Questions and Answers

The following frequently asked questions and answers on Overtime and Compensatory Time provisions and requirements have been prepared by Travis County Human Resources Management Department staff. The purpose of this document is to provide guidance on a range of hours worked and compensation for overtime and/or compensatory time. All of the answers assume the employees in question are FLSA eligible, unless the context makes clear otherwise. This list of questions refers to Policies, Procedures, and Regulations Manual for all Travis County Employees (blue book). The questions have been organized into the following categories:

<u>Section</u>	<u>Categories</u>	<u>Page #</u>
Part I.	Compensable Working Time and Compensation	2 - 10
Part II.	Travel	11 - 12
Part III.	Training and Conferences	13 - 14
Part IV.	Voluntary, Social and Recreational Activities	15
Part V.	Classification of Employees	16 - 17
Part VI.	Recordkeeping	18
Part VII.	Terms	19 - 20

Part I. Compensable Working Time and Compensation

Q: Must a supervisor require that the employees obtain supervisory pre-approval before they work overtime?

A: Yes. All overtime must be approved in advance.

Q: When does Travis County defined work week begin and when does the work week end?

A: Seven (7) consecutive 24-hour periods:
commencing at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday

Q: Who is responsible for knowing when work is performed?

A: Employee's supervisor.

Q: May a non-exempt employee legally waive his/her rights to overtime compensation? Employees says I can't complete my work during my regular scheduled defined work week, and my department can not afford to pay overtime can I just work the extra hours and agree not to be paid?

A: No. Must be compensated for all hours actually worked. Non-exempt employees cannot donate his/her services. Employees and their supervisors must discuss work schedules and workload issues.

Q: What must an employee do if there is an emergency that requires them to work late, and their supervisor has left for the day without giving permission to work overtime?

A: The employee must attempt to obtain permission from a supervisor higher in the chain of command. If the employee is not able to obtain supervisory pre-approval, has made a reasonable effort to do so, and an emergency exists, then that employee will not be subject to disciplinary action and will be compensated for extra time worked.

Q: What is an example compensable time "hours worked" for employees?

<u>Is this an example of compensable time?</u>	<u>Yes</u>	<u>No</u>
• Work time hours that an employee is permitted and authorized to work from their supervisor	X	
• Time worked before the scheduled start time	X	
• Eating lunch at desk while answering the phone or working	X	
• Eating lunch at desk, but not answering the phone nor working		X
• Employees who engages in unauthorized work		X
• Time spent preparing activities which are integral part of the principal activities assigned to work time	X	
• 15 minute break period	X	
• Bona fide meal periods		X
• Extra pay for each work day that exceeds 8 hours		X
• Time worked after the schedule ending time	X	

Q: What are employees and supervisors responsibilities for true, accurate, and complete reporting for accrual and use of FLSA comp time?

A: An employee must accurately report on their timesheets the time they work, and must always obtain supervisory pre-approval when the employee either works overtime or uses FLSA comp time.

Q: What is the difference between FLSA straight (1.0) overtime, premium (1.5) overtime, and compensatory (comp) time? What is the maximum number of comp time hours that can be earned before the time must be paid in cash?

A: Only non-exempt employees are covered by FLSA and can earn overtime.

FLSA straight overtime is accrued at the rate of one (1) hour times the amount of time worked when productive hours are less than forty (40), but combined productive and non-productive hours in a 7-day defined work week exceed forty (40).

FLSA premium overtime is accrued at the rate of one and one-half (1½) times the amount of time worked in excess of forty (40) productive hours in a 7-day defined work week. The employees may not include non-productive time e.g., vacation leave, emergency leave, personal holidays, sick leave, family and medical leave, holiday, military leave, and leave without pay in totaling actual hours worked.

FLSA comp time is accumulated time balances of straight and/or premium overtime, in lieu of monetary overtime compensation, up to the maximum of sixty (60) hours. Departments may establish a lower maximum comp time balance, however; in no case shall the accrual of comp time exceed the Travis County maximum of sixty (60) hours, or the Federal law of two hundred forty 240 hours. Any accrued comp time greater than sixty (60) hours will be automatically paid. Comp time earned is a liability that must be honored. If the employee's position changes from FLSA non-exempt to exempt e.g., via a promotion, or the position classification change; transfers to another Travis County department, or the separation from Travis County will be paid for any comp time worked and not previously taken or paid.

For example:

S	M	T	W	T	F	S	TOTAL
	8H	8	8	8	11		43

Employee works 35 productive hours and earns 8 non-productive hours of holiday time.

Pay:

- Straight time: 32 hours
- Holiday: 8 hours
- Straight overtime pay or compensatory time: 3 hours
- Premium overtime pay or compensatory time: 0 hours

Hours to be during the 7-day defined work week:

- Flex Time:

Overtime Hours to be:

- Pay:
- Comp time: 3 hours [3 x 1.0 = 3]

S	M	T	W	T	F	S	TOTAL
	8H	8	8	10	12	3	49

Employee works 41 productive hours and earns 8 non-productive hours of holiday time.

Pay:

- Straight time: 40 hours
- Holiday: 8 hours
- Straight overtime pay or compensatory time: 0 hours
- Premium overtime pay or compensatory time: 1 hours

Hours to be during the 7-day defined work week:

- Flex Time:

Overtime Hours to be:

- Pay:
- Comp time: 1 hours [1 x 1.5 = 1.5]

Q: Are there effective ways to manage compensable hours?

A: Yes. For example:

- Determining if service level is required
- Supervisory pre-approval of all work hours time
- Changing defined work week schedules
- Supervisor's being aware of work volume and employee productivity
- Supervisor's knowledge of related budget issues
- Adjusting hours worked at non-peak times
- Establish a lower maximum comp time balance
- Flex time during the defined work week
- Assigning work to exempt staff

Q: What are a supervisor's responsibilities for monitoring FLSA comp time?

A: A supervisor must monitor an employee's timesheets to minimize the accrual of FLSA comp time. If an employee works overtime without supervisory pre-approval, the supervisor may have to take steps to discipline the employee.

Q: What are a department head's responsibilities regarding employee accrual of FLSA comp time?

A: The department head must provide supervisory pre-approval for non-exempt employee's to work overtime. Must authorize in advance all overtime, or delegate that duty to the chain of command of managers or other supervisors.

Q: If an employee's FLSA is close to the maximum number of comp time hours, can a supervisor force the employee to take FLSA comp time off?

A: No. However, managers are encouraged to meet with the employees and see if a mutually agreeable arrangement can be made for the employee to take FLSA comp time off.

Q: Do I use a predetermined amount to calculate a non-exempt employee's base rate of pay?

A: Yes. 2080 work hours in a calendar year.

Q: Under what circumstance may an employee "cash out" for the FLSA comp time?

A: Accumulated FLSA overtime must be rendered as pay when an employee's converted; overtime hours exceed the 60-maximum; he/she must be paid for all hours accrued over 60; in no case shall the accrual of compensatory time exceed 240 hours; the employee's position changes from FLSA non-exempt to exempt e.g., he/she gets a promotion, or a position classification change; the employee transfers to another Travis County department; or the employee separates from the Travis County.

Q: What happens if an employee works overtime without the supervisory pre-approval?

A: Unless emergency conditions or other extenuating circumstances exist, the employee may be subject to disciplinary action, ranging from reprimand to termination, in extreme cases.

Q: Must employees who come in early be paid for that time?

A: The conditions under which the employee comes into work early would determine whether that time would be considered working time. If an employee comes in early and reads a book until the time the workday begins, this time would not be considered working time. However, if the employee comes in early and begins working or performing preliminary tasks necessary to the job, then that time would be considered working time.

Q: Are coffee breaks considered working time?

A: Coffee breaks and snack breaks are compensable rest periods and cannot be excluded from hours worked as bona fide meal periods. These rest periods must be counted as hours worked if they last 20 minutes or less.

Q: Are employees entitled to be paid for lunch time if they eat at their desks?

A: If an employee chooses to eat at his/her desk and is completely relieved from duty, then that time would not be considered working time so long as no work is performed. However, if an employee were required to eat at his/her desk, then that time would be considered working time. Be careful of employees who voluntarily eat at their desks, but answer phones or perform other work. They are working, even though it is voluntary on their part. If the employee cannot be allowed a lunch time they are eating and working at the same time.

Q: Is time spent by an employee eating lunch with a client at a facility counted as work time?

A: If the employee has at least 30 minutes lunch time that is not spent on work related activities, then the time is not work time. But if the employee is counseling the client or performing other work-related activities, then the time is work time.

Q: Can a non-exempt be credited with hours if the employee is required to work the holiday?

A: Yes. Regular non-exempt employees who are required to work on a holiday will be credited with eight hours of non-designated holiday time to take at a later date. Code time sheet as appropriate.

Q: Can the non-exempt employee complete the work at home?

A: No. Non-exempt employees are not permitted to work overtime, either at work or at home, without supervisory pre-approval.

A: Yes. Any time spent on work, whether on the work premises or at home, is considered time worked and must be compensated other than travel time under FLSA.

Q: Do non-exempt staff members who work more than eight (8) hours in a day have to receive premium overtime pay?

A: No. Non-exempt employees do not receive overtime for hours worked over eight in a day. They receive straight or premium overtime or compensatory time when combined productive and non-productive hours in a 7-day defined work week exceed forty (40).

Q: If an employee fails to obtain supervisory pre-approval for overtime worked, must Travis County award the employee FLSA comp time?

A: Yes. All work outside regular hours must be compensated. Employees who fail to follow appropriate supervisory pre-approval procedures are subject to disciplinary action.

Q: When an employee works extra hours, can the employee come in late the next morning or later in the defined work week? Does the employee need supervisory pre-approval each time?

A: Yes. Flex time is one method to effectively manage work time and the personnel budget. The supervisor and employees must have a clear understanding regarding defined work week adjustments.

Q: Is time spent by an employee studying a handbook to enhance promotional opportunity considered work time?

A: No. Time spent on a voluntary basis to enhance an employee's chance of being selected for a higher paying job is not work time.

Q: Is time spent by an employee typing a job application during the lunch hour considered work time?

A: No.

Q: Are part-time employee's eligible to earn compensation for extra time worked?

A: Yes. The provisions that apply to full-time employees also apply to part-time employees. Employees must work more than 40 hours in a defined work week to receive FLSA overtime and compensatory time.

Q: Are non-exempt employees eligible to work a second-job at Travis County?

A: Yes. If the employee works in (a) primary job and (b) temporary job and both are non-exempt the hours for the 7-day defined work week are combined to determine total work hours. This type of dual employment arrangement must be approved prior to the employee working that second-job. These type of employment arrangements require careful monitoring by management as overtime liability could be created for the County. There are FLSA special rules for employees who work occasionally or sporadically, and this provides that hours worked in different jobs should not be combined for determining overtime.

Q: Is on-call time considered working time?

A: The issue of pay for on-call time depends largely upon the employee's freedom while on, call, including how quickly he/she is required to respond to the call. If the employee can come and go freely while on-call, then that time is not compensable. However, if the employee must remain on or close to the employer's premises and cannot use the time freely, then that time is considered working time and is compensable. An employee who is required to leave a telephone number where he/she may be reached would not be compensated for that on-call time, unless a very short response time, e.g., within a few minutes, is required. Providing "beepers" to employees can alleviate many on-call time problems.

Q: Does the employee, with supervisor's approval, and department time keeper report straight and premium overtime, and compensatory time hours using the timesheets?

A: Yes. Always report the actual number of hours worked using the timesheets. The system will automatically calculate the resulting overtime hours as cash payment or compensatory time hours based on the payroll designation.

Q: Is there an official document available that shows the FLSA designation of his/her position?

A: Yes. The approved job description. Available from the department Human Resources coordinator/liaison.

Part II. Travel

Q: An employee lives in Round Rock and works in Austin. On an out-of-town assignment the employee travels from his/her home in Round Rock and drives through Austin to reach San Antonio. Does all the travel count as work time?

A: Yes. All the travel time counts if the employee is traveling a longer distance than the employee's normal travel between home and work. (Out of town travel is not work time if the distance is shorter than the employee's normal travel between home and work).

Q: Does out of town travel count if it is after normal work hours?

A: Yes. All out of town travel counts as work time as long as the distance is longer than normal home to work travel.

Q: If an employee is on an out-of-town assignment, can the employee claim travel between the work assignment and the motel?

A: No. Out of town travel between work and motel is equivalent to work-to-home travel.

Q: If an employee begins a work day in the same town as the employee's normal work site but at a different work site does the travel count as work time?

A: No. Travel to a different in-town work site to begin the day is considered normal home-to-work travel.

Q: If an employee ends a work day at a different site from the employee's normal work site but in the same town, can the employee claim travel home?

A: No. In-town work to home is not considered work time, regardless of the location of the last work site of the day.

Q: Is time spent waiting at an airport for a connecting flight counted as work time?

A: Yes.

Q: When several workers travel together to and from meetings or training outside regular work hours, can both driver and passengers claim work time?

A: Yes. Drivers and passengers earn work time.

Q: Workers sometimes conduct public awareness presentation or attend board meetings after work hours. Does the time spent traveling to and from these events count as work time?

A: Yes. All after hours travel except travel between the employee's home and normal work site count as work time.

Q: Can an employee be paid for travel in some instances that would not be work time?

A: Yes. For instance, if an employee traveled out of town, but the distance was shorter than the employee's normal home to work travel, the travel would not be work time, but the employee would be eligible for travel reimbursement.

Q: Two employees who normally work in Bastrop finish out-of-town assignment in Austin at 2:00 p.m., and both want to go home, taking leave for the of the day. One lives in Bastrop, and the other lives in Austin. When does drive leave begin for each?

A: The employee who lives in Austin goes on leave at 2:00 p.m. because the work day has ended and the employee's travel home is a shorter distance that normal work-to-home travel. The employee who lives in Bastrop goes on leave when the employee arrives at home because the out-of-town travel is a longer distance that normal work-to-home travel.

Part III. Training and Conferences

Q: Workers sometimes attend conferences or meetings that have luncheon speakers or evening reception. Does the time spent in these activities count as work time?

A: It depends. If the luncheon speaker covers training material or a topic related to the employee's work, then that time would be counted as working time. Evening receptions at conferences do not count as work time.

Q: Does time spent in Travis County sponsored classes conducted after hours in such areas as Spanish, aerobics, and computers, count as work time?

A: If the participation by the employee is totally voluntary, and the course content is not required in the employee's job, the time spent attending these classes after hours does not count as work time.

Q: Does time spent in non-Travis County sponsored work related classes conducted after hours which are taken to enhance job skills and/or promotional opportunities count as work time?

A: The time does not count as work time if attendance is totally voluntary and the course content is not required in the job. For example, voluntary attendance at a paralegal program training class after hours probably would be work time for Legal Assistant; voluntary attendance at a Spanish-speaking class after hours most likely would not be work time. The paralegal program is an integral part of the Legal Assistant job. Spanish speaking skills would enhance the Legal Assistant's ability to work with Spanish-speaking only clients but a Legal Assistant would not normally be required to learn Spanish.

Q: Would attendance at brown bag sessions, such as dialogue with administrators, count as work time?

A: No. Brown bag sessions normally would not count as work time as long as attendance is totally voluntary.

Q: If an employee is allowed to take a college course during work time, does study time after hours count as work time?

A: As long as the Travis County is not requiring the employee to take the course, after hours study time does not count as work time.

Q: If an employee is in training from 8:30 a.m. to 4:30 a.m. Monday through Thursday, and on Friday the employee works a 9-hour day, has the employee worked a 41 defined work week?

A: Yes. A full-day training session is considered an 8-hour day. In this example, the employee has worked four 8-hour days and one 9-hour day for a total of 41 work hours in the defined work week.

Q: If employees voluntarily take Travis County sponsored computer classes after hours; can they do any Travis County work while learning on the computer without it counting as work time?

A: No. Time spent conducting any Travis County work is work time.

Part IV. Voluntary, Social and Recreational Activities

Q: Employees, who participate on committees for wellness, special events, employee recognition, etc., are involved in activities during work time, after hours, and on weekends. Does all the time spent on these activities count as work time?

A: If the employee is participating voluntarily and not performing duties required on the job, then activities spent totally voluntarily after hours planning and conducting such events as volleyball tournaments, etc., is not work time, even if the Travis County allows time to also be spent on the activity during normal hours.

Q: Is an employee who serves food or sodas at a Travis County weekend activity work time?

A: If the employee's participation is totally voluntary, the employee is not on work time.

Q: Is an employee who volunteers to sell tickets to a Travis County sponsored picnic, or prepares food for a birthday luncheon or a bake sale on work time?

A: No. As long as the employee's participation is totally voluntary, the employee is not on work time.

Part V. Classification of Employees

Q: I have a question about whether an employee's position is FLSA exempt or non-exempt. Who can I ask for information about this designation?

A: Discuss with department Human Resources coordinator/liaison. HR coordinator/liaison will contact compensation analyst within the Human Resources Management Department to discuss questions about professional, administrative, and executive exemptions under the FLSA.

Q: I have an employee who disagrees with the FLSA designation of his/her position. What should I do?

A: Discuss with department Human Resources coordinator/liaison. HR coordinator/liaison will contact compensation analyst within the Human Resources Management Department to discuss the situation.

Q: FLSA provisions provides for long- and short- tests for determining employees as either exempt or non-exempt status under the professional, executive or administrative tests contained in the Act. Which test does Travis County use for determining whether an employee is exempt or non-exempt?

A: Short-test.

Q: What constitutes the "exercise of discretion" in tests of whether an employee is exempt from coverage or not?

A: An employee who exercises discretion or independent judgment is able to make decisions freely without needing to consult a superior. The work must require the employee to compare and evaluate possible courses of conduct and act or make a decision after various possibilities have been considered. This decision-making power should be real and substantial, free from immediate supervision, and exercised with regard to matters of consequence.

Q: Is a Professional Engineer (P.E.) FLSA exempt as a "professional"?

A: It depends. To qualify for the FLSA professional exemption, an employee's primary duty must consist of the performance of work 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, as distinguished from a general academic education and from an apprenticeship. In addition, the employee's primary duty must include work requiring the consistent exercise of "discretion and independent judgment".

Q: Can a person who is doing professional work, but does not have a degree, be considered exempt under the professional category?

A: Yes. Testing and designation exemption status results are not determined on the employee's special skills, knowledge, qualifications, performance, job title, salary, nor the pay grade of the position.

Human Resources Management Department determines the FLSA status of each job title by applying the professional, executive or administrative short-tests. FLSA testing is based on the positions management, supervision, authority, frequency and amount of discretion, independent judgment, compensation, work responsibility, amount of time spent, relative freedom from supervision, type of job skills used, primary job duties and work responsibilities performed, number of employees supervises or directs, acquisition of professional knowledge through prolonged study, apply special knowledge of talent.

Q: Could an employee who only has to get general approval of his/her work be considered exempt?

A: It depends on how specific and frequent the "general approval" is. If the employee works only under general supervision, such a person could qualify for exemption under the administrative category if he/she met the conditions of the short test.

Part VI. Recordkeeping**Q: Why must a time record be maintained?**

A: FLSA requires that employees true, accurate, and complete time defined work week records that represent an annual twelve (12) month Sunday to Saturday calendar for the productive and non-productive work hours, reminder these are different than timesheets. Supervisors are required to certify time records for each employee that reflects true, accurate, and complete productive and non-productive work hours for each defined work week.

Q: What finalizes a defined work week record?

A: The employee's and the supervisor's signature.

Q: Departments are to designate a time keeper?

A: Yes.

Q: How long must a time record be maintained?

A: Records retention for four (4) years.

Part VII. Terms

Q: What do these terms mean?

A: FLSA – the Fair Labor Standards Act (FLSA) of 1938, as amended.

A: Minimum Wage – Federal law requires the payment of a base pay rate of \$7.25 per hour as of 7/24/2009. (At Travis County, regular employees are paid at least the approved Livable Wage rate of \$11.00).

A: Hours Worked and Compensation – FLSA defines what constitutes “hours worked” which requires compensation; critical for completing recordkeeping defined work week calendars.

A: Non-Exempt – positions are subject to the overtime/compensatory time FLSA provisions; employees whose positions do not meet the FLSA exemption tests and are paid an hourly wage and; these employees earn compensatory time or cash for actual productive hours worked in excess of 40 hours per the defined work week.

A: Exempt – positions are exempt from many of the provisions of the FLSA; positions are those that have been determined to be exempt from the FLSA overtime hour provisions; employees are not eligible for overtime compensation; bona fide professional, executive, and administrative employees who are paid a salary for performing the job, not for actual hours worked.

A: Employee’s Responsibilities – performs job duties by an approved defined work week schedule of no more than forty (40) productive and non-productive work hours.

A: Supervisor’s Responsibilities – manages hours of non-exempt job duties by approving each defined work week schedule of no more than forty (40) productive and non-productive work hours.

A: Authorized Work – overtime work that is ordered and approved in advanced by the supervisory chain of command.

A: Recordkeeping – time records that reflect true, accurate, and complete productive and non-productive work hours for each defined work week; certified by the employees and supervisors; records retention for four (4) years.

A: Defined Work Week – an employee’s fixed and regularly recurring period of hours throughout seven (7) consecutive 24-hour periods; total of productive and non-productive work hours commencing at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday; different than pay periods; can not average work hours over two or more defined work weeks or pay periods; may establish different defined work weeks for different employees or groups of employees.

A: Productive Time – time spent performing job duties required of a county position, representing the county in an official capacity or attending official, county-required training. note: jury duty is productive time, however, it will not be used to calculate overtime pay.

A: Non-productive Time – vacation leave, emergency leave, personal holidays, sick leave, family and medical leave, holiday, military leave, and leave without pay.

A: Flex Time – approved flexible working hours so that no than forty (40) more productive and non-productive hours are worked in any defined work week; can not flex work hours over two or more defined work weeks or pay periods.

A: Overtime – Straight Time – time accrued at one hour for every hour actually worked up to forty (40) when actual hours worked in a defined work week are less than forty (40), but combined productive work hours and non-productive paid leave hours exceed forty (40).

A: Overtime – Premium Time – time accrued at one and one-half for every hour actually worked over forty (40) in a defined work week.

A: Compensatory (Comp) Time Balances – accumulated time balances of straight and/or premium overtime, in lieu of monetary overtime compensation, up to the maximum of sixty (60) hours; departments may establish a lower maximum comp time balance, however; in no case shall the accrual of comp time exceed the Travis County maximum of sixty (60) hours, or the Federal law of two hundred forty 240 hours; any accrued comp time greater than sixty (60) hours will be automatically paid; comp time earned is a liability that must be honored; if the employee's position changes from FLSA non-exempt to exempt e.g., via a promotion, or a position classification change; transfers to another Travis County department, or the separation from Travis County the employee will be paid for any comp time worked and not previously taken or paid.

A: Defined Work Week Calendar – annual twelve (12) month Sunday to Saturday calendar for employees and supervisors to complete productive and non-productive work hours; different than timesheets.