

Chapter: Attendance, Shifts, and Timekeeping	Effective Date: 12/7/14
Title: Fair Labor Standards Act (FLSA) Overtime and Compensatory Time	Page: 1 of 4
ACA: N/A	Replaces: PRS.27.23, 12/1/11
Statutes: Texas Gov't Code §§659.015, 659.016, 659.018 29 U.S.C. Chapter 8	

(a) **Policy.**

The Texas Juvenile Justice Department (TJJD) complies with all applicable federal and state laws regarding accrual and use of Fair Labor Standards Act (FLSA) [overtime](#) and [compensatory time](#).

(b) **Definitions.**

For definitions of certain terms used in this policy, see the [PRS Glossary](#).

(c) **Additional Resources.**

(1) See [PRS.28.02](#) for an explanation of:

- when an employee may choose to use accrued overtime leave or compensatory time leave;
- when an employee may be required to use accrued overtime leave or compensatory time leave
- restrictions on the use of such leave.

(2) See [PRS.27.25](#) for an explanation of an employee's and a supervisor's responsibilities relating to timekeeping.

(d) **Supervisor's Responsibilities**

In addition to scheduling the working hours of the employees they supervise, a supervisor must:

- (1) approve overtime before it is worked;
- (2) manage the amount of compensatory time accrued, as directed by the appropriate division director or department head;
- (3) use discretion to adjust an employee's regularly scheduled work hours within the same workweek to avoid or reduce the employee's accrual of overtime or compensatory time; and

Example: If an [FLSA non-exempt employee](#) works four extra hours on the first day of the workweek, the supervisor may require the employee to take off four hours during the same workweek to avoid accrual of overtime.

- (4) consult with the appropriate human resources administrator (HRA) if the supervisor needs clarification whether the time an employee worked could result in overtime or compensatory time being earned.

(e) **Overtime.**

(1) **Overtime Accrual.**

- (A) Overtime is accrued at a rate of 1½ times the time worked.
- (B) Full-time and part-time employees who are FLSA non-exempt accrue overtime when they work more than 40 hours in a workweek.

(2) Compensation and Maximum Overtime Leave Balance.

- (A) The FLSA allows TJJD to compensate employees for overtime by cash payment or by granting time off. If TJJD makes a cash payment in one instance, this will have no effect on whether TJJD decides to grant time off for overtime compensation in future workweeks.
- (B) The [chief local administrator](#) (CLA) or designee must coordinate efforts with the HRA to ensure that, to the extent possible, an FLSA non-exempt employee who has an overtime leave balance is paid or given time off (or some combination of both) to eliminate the balance before the effective date of a promotion, demotion, JCO career ladder adjustment, or change in FLSA status from non-exempt to exempt.
 - (i) Compliance with this procedure reduces the overtime payment liability to the agency.
 - (ii) Employees may not be forced to take overtime leave before the effective date of a salary change, unless otherwise directed by the executive director.
- (C) The maximum number of overtime hours that any employee is allowed to maintain in his/her leave balance is 120 hours.
 - (i) When an employee's overtime leave balance exceeds 120 hours, the employee's overtime balance must be reduced to below 120 hours by:
 - (I) paying the employee in at least 16-hour increments;
 - (II) granting time off; or
 - (III) a combination of both.
 - (ii) Only the executive director or his/her designee may authorize employees in a particular job class or job series or assigned to a particular facility or department to be paid for overtime hours before the maximum balance is reached.

(f) Compensatory Time.**(1) Earning Compensatory Time.****(A) Work Performed at Personal Residence.**

- (i) Before any employee accumulates compensatory time for hours worked at the employee's personal residence, written approval must be obtained from the executive director or his/her designee.
- (ii) If the employee does not report directly to the executive director:
 - (I) the employee must send an email to his/her CLA requesting the ability to earn such compensatory time leave; and
 - (II) the CLA must:
 - (-a) approve or deny the request, and:
 - o if approved, forward the email to the executive director or his/her designee for a final written decision; or
 - o if denied, respond to the email indicating that the request has been denied; and
 - (-b) ensure the HRA is provided a copy of the email with the decision for filing in the employee's personnel file.

(B) FLSA Non-Exempt Employees.

- (i) A full-time or part-time FLSA non-exempt employee earns compensatory time only when the employee:
 - (I) works and uses leave in the same workweek; and
 - (II) the sum of hours worked and leave hours taken exceeds 40 hours in the workweek.
- (ii) The amount of compensatory time earned in a workweek is equal to the number of hours remaining after subtracting the following from the sum of hours worked and leave taken:
 - (I) 40 hours; and
 - (II) any overtime hours.

(C) FLSA Exempt Employees.**(i) Salary Schedule A, Salary Group B24 or Below, and Certain Education Positions.**

An FLSA-exempt employee in a Salary Schedule A position, a Salary Schedule B position in group B24 or below, or an unclassified education position other than principal earns compensatory time only when:

- (I) his/her compensatory time leave balance is less than 40 hours; and
- (II) the sum of hours worked and leave hours taken in a workweek exceed:
 - (-a-) 40 hours in a workweek for a full-time employee; or
 - (-b-) the regularly scheduled work hours for a part-time employee.

(ii) Employees in Salary Group B25 and Above and Principals.

An FLSA-exempt employee in a Salary Schedule B position in group B25 or above or a principal earns compensatory time only when:

- (I) the employee meets the criteria above for other FLSA-exempt employees; and
- (II) he/she has received prior approval from the appropriate division director (or from the executive director if the employee is a division director) to earn compensatory time for the hours worked.

Note: Division directors should limit such approval to unusual situations.

(D) Options for Earned Compensatory Time.

When an employee earns compensatory time in the same workweek that he/she used leave, the employee generally has two options to account for the leave.

- (i) **Option 1:** Use only the amount of leave needed to bring the total hours for the workweek up to 40.
- (ii) **Option 2:** Use exactly the amount of leave needed to cover an absence.

Note: If the leave used during the workweek in which compensatory time is earned is paid military leave or a special-purpose leave described in [PRS.28.17](#), the employee must use Option 2.

(2) **Compensation for Compensatory Time.**

No employee may receive payment for compensatory time that is not used as leave.

(3) **Lapsing of Compensatory Time Leave.**

All compensatory time leave must be taken during the 12-month period following the end of the workweek in which it was accrued or it is no longer available for use.

(g) **Employees Performing Volunteer Services for TJJD.**

(1) The FLSA allows state employees to perform volunteer services for their employer without the state agency incurring wage liability if:

- (A) the hours of service are for civic, charitable, or humanitarian purposes;
- (B) no compensation is promised, expected, or received;
- (C) the employee volunteers freely, without pressure; and
- (D) the volunteer activity is not the same as or similar to the employee's regular duties.

(2) Refer to [VLS.01.03](#) for agency-specific provisions regarding employee participation in the TJJD volunteer program.
