

Section: COMPENSATION  
Subject: Overtime for Nonexempt Employees  
Number: HR 3445

I. Institutional Regulations

- A. Nonexempt employees are employees who are covered by the overtime provisions of the Fair Labor Standards Act (FLSA). Nonexempt employees are in the following groups at DMACC:
  - 1. Positions designated as salaried nonexempt on the Administrative/Professional Pay Schedule; or
  - 2. Positions paid on an hourly basis. Support Staff, Confidential Clerical, IES Administrative Support, Trail Point Support, and temporary employees are paid on an hourly basis, even if their pay is annualized.
- B. Nonexempt employees shall be paid overtime for hours worked over 40 in a workweek, in accordance with the FLSA and any applicable collective bargaining agreement or College procedure provisions.
  - 1. The College workweek is Sunday, 12:01 a.m. through Saturday, 12:00 midnight. Overtime shall be computed on a workweek basis.
  - 2. Overtime shall be paid at the rate of time and one-half an employee's regular hourly rate of pay or weighted average rate. Nonexempt employees may not be given compensatory leave in lieu of paid overtime.

II. Procedure

- A. Nonexempt employees may not waive their rights under the FLSA by agreeing to work more than 40 hours in a workweek without receiving the required overtime compensation.
- B. Nonexempt employees may volunteer their services to the College only if the services are truly voluntary and not related to their regularly assigned job duties,
- C. Supervisors shall control the overtime worked by their nonexempt employees.
  - 1. Nonexempt employees must have supervisory approval before working overtime or working extra hours that could result in overtime except in emergency situations, when prior approval is not practical.
  - 2. If a supervisor knows or has reason to believe that a nonexempt employee is performing unauthorized work and does nothing to stop it, the employee has been "suffered or permitted" to work and is required to be compensated for the work. This includes work performed at home.
  - 3. Supervisors may require nonexempt employees to work overtime.
    - a. Overtime shall be distributed as supervisors deem necessary, based on the work to be done and the particular skills and abilities of the employees. A relatively even distribution of overtime assignments shall be attempted when possible.
    - b. Employees shall be provided with as much prior notice as circumstances allow and supervisors shall attempt to avoid serious inconvenience to employees when scheduling overtime assignments.
  - 4. An employee's work schedule may be adjusted to avoid the incurrence of overtime. For example, if an employee regularly works 8 hour days, but puts in 10 hours on Monday, the supervisor could reschedule Friday to a 6 hour day, keeping the total hours worked in the work week at 40. Rescheduling must be done within the workweek. Hours may not be averaged over two or more workweeks. A schedule change should only be considered when work demands allow and when affected employees may be given sufficient prior notice.

D. Salaried Nonexempt

1. The annual salary of a salaried nonexempt employee who is assigned to a regular schedule of 40 hours per week is intended to compensate the employee for that schedule. Human Resources shall obtain the work schedule for new salaried nonexempt employees from their supervisors and shall send a Schedule Notice, P-19, to the employees notifying them of their schedule and their nonexempt status.
2. If the employee works overtime, the employee's "regular" rate of pay for purposes of determining the overtime rate shall be determined by dividing his/her annual salary by the industry standard of 2080 hours.

**EXAMPLE**

A. Employee is paid an annual salary of \$24,000. The salary is intended to compensate the employee for 40 hours per workweek.

B. Employee works 48 hours in a given workweek:

1.	\$24,000 ÷ 2080 hours = \$11.54	Regular Rate (for 40 hrs)
2.	\$11.54 X 1.5 = \$17.31	Overtime Rate (for 8 hrs)

3. Salaried nonexempt employees shall be governed by the same overtime hours of work provisions as hourly nonexempt employees.

E. Time Reporting – Nonexempt employees shall report all time worked and all leave usage.

F. Hours Of Work

The FLSA includes, as hours of work for the purpose of computing overtime, all time a nonexempt employee must be on duty, must be on the employer's premises or at any other prescribed place of work, or any additional time the employee is suffered or permitted to work. DMACC also includes paid leave as work time, excluding personal Sick Leave and Personal Business Leave.

1. Paid rest breaks are not required by FLSA but if they are provided, they will be considered work time and counted towards the computation of overtime.
2. Unpaid meal breaks are not counted as time worked toward the computation of overtime if the meal break is at least 30 minutes uninterrupted during which no work is performed. If the employee is required, suffered or permitted to perform work during the lunch break, the employee must be paid for the period of the interruption and another 30 minute uninterrupted period rescheduled. If another 30 minute uninterrupted period is not rescheduled, the initial 30 minute lunch break shall be paid in its entirety and considered work time when computing overtime.
3. Work outside an employee's scheduled hours which is negligible (insubstantial or insignificant periods of time which cannot as a practical administrative matter be precisely recorded for payroll purposes) may be disregarded as work time. DMACC uses 15 minutes as the minimum unit of time to be reported for payroll purposes: 8 to 14 minutes in a day are reported as 15 minutes; 7 minutes or less in a day are considered negligible and are disregarded.
4. Travel time is considered work time as follows:
  - a. Travel time which is related to a nonexempt employee's job duties and which is "all in a day's work" is work time;
  - b. Time spent performing work while traveling is work time;

- c. All travel time as the result of a one day out of town work assignment, less any applicable meal breaks and home-to-work travel time is work time, regardless of whether the employee is a driver or a passenger;
- d. If travel keeps a passenger employee out overnight, only the travel occurring within the employee's regularly scheduled work hours, including corresponding hours on nonwork days but less any applicable meal breaks and normal home-to-work travel time, is work time.
- e. All travel time for employees who drive, less any applicable meal breaks and normal home-to-work travel time, is work time;
- f. Regular travel time between home and work, whether at a fixed location or varying work locations, will not be considered work time.

5. Hours of Work for Drivers

- a. Drivers shall be paid for all on-duty time, such as:
  - 1) Time spent driving the vehicle;
  - 2) Time spent preparing/maintaining/securing the vehicle;
  - 3) Time during which drivers are engaged to wait for work (time which cannot be used effectively by the drivers for their own benefit because it is unpredictable and of limited duration);
  - 4) Trip hours crossing the employee's regular work schedule, including Saturday and Sunday, even if no work is performed. Note: If a Temporary driver is hired for a trip and does not have a regular work schedule, only the hours actually worked must be considered duty time.
- b. Drivers shall not be paid for off-duty time, which are those hours that:
  - 1) Occur outside the employee's regular work schedule; and
  - 2) During which no work is performed; and
  - 3) Can be used effectively by the drivers for their own benefit (to be used effectively, the time must be of a reasonable duration and relatively predictable). Drivers shall be given a trip schedule, with expected duty time, prior to the trip so that off-duty time can be used as effectively as possible by drivers.

Note: If a driver uses the College vehicle during his/her off-duty time as a method of conveyance only, it is still considered off-duty time. However, if the driver can't just park the vehicle, but has to keep checking on it, it becomes work time.

- 6. Lectures, meetings and training time will be considered work time unless all of the following are met:
  - a. Attendance is outside of the employee's regular working hours; and
  - b. Attendance is voluntary; and
  - c. The course, lecture or meeting is not directly related to the employee's job (this does not include independent job-related training taken at the employee's own initiative); and
  - d. The employee does not perform any productive work during such attendance.

- 7. Unless otherwise excluded, payment of a time and one-half premium rate for work on a holiday or unscheduled weekend work shall be treated as overtime pay and shall not be recounted when computing overtime.
- 8. Call Back Pay - If the call back pay includes pay for hours not worked (e.g. employee worked 1 hour but was paid a guaranteed minimum of 2), only the actual hours worked shall count towards overtime.
- 9. On Call Hours - On call hours are not considered hours of work for purposes of calculating overtime but the on call pay shall be included in determining the employee's "regular" rate of pay. The regular rate of pay is then used to determine the overtime premium.

<b>Example</b>	
A. Regular straight time earnings from all sources plus on call pay:	
1. 40 hours at \$8.00	\$320
2. 3 overtime hours	\$ 24 Straight Time
3. On Call Pay	<u>\$ 25</u>
	<b>\$369</b>
B. Regular hourly rate for purpose of determining 1/2 time premium OT rate:	
	$\$369 \div 43 = \$8.58$
C. 1/2 time premium OT rate:	
	$\$8.58 \div 2 = \$4.29$
D. Total pay for employee:	
\$369	Straight time and on call pay
<u>\$ 12.87</u>	1/2 time premium ( $\$4.29 \times 3$ hours)
	<b>\$381.87</b>

- G. If a nonexempt employee works at 2 different jobs during a workweek and the jobs have different rates of pay, the employee's "regular" rate of pay for purposes of determining the overtime premium will be based on the weighted average of both rates. Timesheets for the second job will be required. If the second job is as an Adjunct instructor and the pay is per ECH, the ECH's will be converted to an hourly rate in order to determine the overtime premium and pay the employee appropriately. Regular nonfaculty employees are limited to a maximum of 6 credits per semester as an adjunct instructor. Regular nonfaculty employees must submit a Request for Employee to Teach Courses (P71) form to request permission to teach as an adjunct instructor.

<b>Example</b>	
A. Regular straight time earnings:	
1. Job A - 40 hours at \$8.00/hour	= \$320
2. Job B - <u>10 hours at \$10/hour</u>	<u>= \$100</u>
50 hours worked	<b>\$420 Straight time pay</b>
B. Regular rate of pay for purposes of determining 1/2 time premium OT rate:	
	$\$420 \div 50 \text{ hours} = \$8.40$
C. Total pay for employee:	
\$420	Straight time pay
<u>\$ 42</u>	1/2 time premium ( $\$8.40 \div 2 = \$4.20 \times 10$ overtime hours)
	<b>\$462</b>

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