

## **Article 39 Non-Exempt Members**

### **Section 39.1 Applicability**

- A. This article applies only to those members determined to be covered by the overtime provisions of the Fair Labor Standards Act. This article does not apply in any respect to members of the bargaining unit determined to be exempt from the overtime provisions of the Fair Labor Standards Act and shall not serve as a model or guidance for the terms and conditions of employment applicable to exempt members in this bargaining unit.
- B. The terms of this Article supersede any provision of this Agreement with which they conflict with respect to members determined to be non-exempt.

### **Section 39.2 Determination of Status**

- A. The determination of whether a member is covered or not covered by the overtime provisions of the Fair Labor Standards Act shall be made by the University, by applying federal laws and regulations, and shall not be subject to the grievance and arbitration provision of this Agreement.
- B. The determination of whether a specific state title applies to a given member shall be made by the University and shall not be subject to the grievance and arbitration provision of this Agreement.

### **Section 39.3 Schedules less than 52 weeks**

Members may be hired into or placed on a work schedule that is less than 52 weeks. The period of time that the member is not scheduled to work will be considered unpaid time unless s/he uses accrued vacation or personal time. Sick and vacation leave and creditable service toward retirement will not accumulate when the member is on unpaid time.

### **Section 39.4 Hours of Work**

- A. The official workweek for payroll purposes begins at midnight on Sunday and ends at 11:59 p.m. the following Saturday.
- B. The regular hours of work for full-time members shall be 37.5 hours per week excluding meal periods. Work schedules may vary among departments and may include part-time schedules, required overtime, and flexible or seasonal schedules to accommodate the operational needs of the department.
- C. To the extent practicable, the normal work week shall consist of five (5) consecutive days, Monday through Friday, with the regular hours of work each day to be consecutive except for meal periods. To the extent practicable,

members who work in departments with continuous operations shall receive two (2) consecutive days off in each seven-day period; however, this does not apply to members who work on a rotating shift schedule and to those who work in departments which have mandatory staffing requirements due to licensing standards or the safety needs of the University.

- D. Departments may schedule employees to work on other than a typical day shift. A second shift commences at 2:00 p.m. or after and ends no later than 12:00 a.m. A third shift commences at 10:00 p.m. or after and ends no later than 8:00 AM.
  
- E. Members shall record attendance in accordance with procedures established by the University. These procedures may include the requirement to record arrival and departure times at the start and end of each workday. The University will notify the Union thirty (30) days prior to making a change in the existing method of recording attendance.
  
- F. When the department desires to change a member's work schedule and/or workweek the affected member shall have the rights contained in Article 14 concerning transfers and reassignments. The work schedule of a member shall not be changed to avoid the payment of overtime of five days or less. Minor schedule adjustments, of an hour or less per day, shall not be subject to Article 14. In cases of emergency involving the protection of University property or the health and safety of people whose care has been entrusted to the University, such discussion and/or written notice shall not be required.

### **Section 39.5 Overtime**

- A. Base pay for calculating the overtime rate for non-exempt members shall be determined by applicable law. The base hourly rate is calculated by dividing annual salary by 1950 hours.
  
- B. Members rendering service on a second shift will receive a shift differential of at least seventy-five cents (\$0.75) per hour for each hour worked. The shift differential will be paid in addition to regular salary when the entire workday is on a second or third shift.

### **Section 39.6. Overtime**

- A. Overtime must be authorized in advance by a department head or supervisor. However, all overtime will be paid even if prior authorization was not given. Members who work overtime which has not been previously authorized will receive the applicable overtime rate for such work, but the parties agree such

occurrences will be addressed appropriately by supervisors to prevent them from recurring.

B. Supervisors will attempt to provide members with advance notice as soon as the need for overtime work is determined. However, advance notice may not always be possible.

C. Overtime status exists when total actual work hours from all sources within the University exceed forty (40) hours in a workweek (Sunday through Saturday) or eight hours in a day.

D. The following will be regarded as "hours worked" for the purpose of computing overtime pay:

- Holidays which fall on a member's regularly scheduled work day
- Rest periods
- Compensatory time off
- Jury duty and court appearance leave
- Time spent in authorized training
- Meal periods where a member is not relieved of his/her post, station or duty. Any time the member spends on work during a meal break is considered time worked and must be compensated.

E. A member will receive compensation for authorized overtime work as follows:

- The member will be paid at his/her regular hourly rate of pay for all hours worked up to forty (40) hours in any given work week and eight (8) hours in any given work day.
- The member will be paid one and one-half times the regular hourly rate of pay (plus shift differential, if any) for all hours worked beyond forty (40) hours in any given work week and beyond eight (8) hours in any given work day.
- Upon the member's request and consistent with staffing and business needs, the department may authorize compensatory time off, calculated at one and one-half times the overtime hours worked beyond forty (40) hours in any given work week and beyond eight (8) hours in any given work day, in lieu of paid overtime. Such compensatory time must be recorded, may be accumulated up to 240 hours, and must be used within twelve (12) months.
- Members who have accrued the maximum amount of compensatory time shall be paid the hourly rate authorized for overtime work. Upon termination of employment, a member will be paid for all unused compensatory time at the member's final regular rate of pay.



- F. Members will normally receive payment for overtime in the pay period following the period in which such overtime was worked, providing that the time record was properly prepared, approved, and forwarded to payroll for processing in a timely manner.
- G. There shall be no duplication, pyramiding, or compounding of any premium wage payments.
- H. Prior to invoking compulsory overtime, if safety and security permits, the department will solicit volunteers beginning with the member that has earned the least overtime during the current fiscal year and proceeding to the member with the next least amount of overtime. If two or more members have earned the same amount of overtime during the fiscal year, the department will solicit volunteers from among those members in order of seniority. This process will continue until a volunteer is found. If volunteers are not available, the department will require a member to perform such work in order of inverse seniority. Overtime will not be assigned unreasonably. A member may not refuse to perform compulsory overtime, except for reasons acceptable to the department.

**Section 39.7 Meal Periods**

An unpaid meal period will be scheduled as close to the middle of the shift as possible, considering the needs of the appointing authority and the needs of the member. In no case will the scheduled meal period be less than thirty (30) minutes nor more than sixty (60) minutes in length unless there is mutual agreement between the supervisor and the member to extend beyond the sixty (60) minutes for special occasions. During overtime work hours, the department will schedule additional unpaid meal periods as are reasonable. Meal periods are not cumulative and may not be used to shorten the length of the workday.

**Section 39.8 Rest Periods**

One fifteen-minute rest period will be given to members during each four-hour work period. Rest periods are not cumulative and may not be used to shorten the length of the workday.

**Section 39.9 Standby**

- A. Departments will specifically designate in writing those members who are to be in standby status, if any. Standby status means that the member is free to engage in activities for his or her own purpose but must be available and ready for duty upon receipt of a message to report to work.

- B. A member on standby status is responsible for keeping the University aware of his/her whereabouts and must be immediately accessible by telephone or beeper.
  
- C. A member who is required by the department head to be available to report for duty shall be reimbursed at a rate of at least thirty dollars (\$30.00) for each stand-by period, defined as fifteen (15) hours for any night duty and nine (9) hours for any daytime duty.

**Section 39.10 Holidays**

In addition to the paid holidays and applicable language contained in Article 21 of this agreement, this section provides the terms and conditions under which paid holidays are provided and administered to non-exempt employees within the unit.

- A. If a holiday occurs on a member's regularly scheduled workday but the member is not required to work that day, the member is entitled to receive his/her regular day's pay. If a holiday occurs on a member's regularly scheduled day off and the member's normal work week is at least five (5) days, the member is entitled to receive either one day of pay at his or her regular rate or one (1) compensatory day.
  
- B. A member who is required to work on a holiday shall, at his or her request, be compensated at the rate of two (2) times the regular rate of pay or shall receive pay for one (1) day at the regular rate plus one (1) compensatory day.
  
- C. Whenever the department has been informed that any work day has, in whole or in part, been declared a skeleton day, the department head will determine who among the employees shall be released with pay from the regularly scheduled duties for the duration of the skeleton day.
  
- D. A member who is on unauthorized leave without pay for any of his/her scheduled work day immediately preceding or immediately following a holiday or who is on authorized leave without pay for the entire work day immediately preceding and immediately following the holiday shall not receive pay or a compensatory day off for that holiday.
  
- E. A member scheduled to work on a holiday who fails to report as scheduled shall be recorded as absent without pay unless the unit member properly notifies the department at least one hour prior to the beginning of the work day. In circumstances beyond the control of the employee, such notice shall be made as early as possible on the day of absence. An employee who is granted paid leave for a holiday on which he/she is scheduled to work shall not receive holiday pay or a compensatory day off for that holiday

- F. Members who render service on New Year's Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day shall receive a holiday differential of at least fifty cents (\$0.50) per hour worked between the hours of 11:00 p.m. on the holiday eve and 11:00 p.m. on the holiday.

**Section 39.11 Meetings and Training Programs**

- A. Staff must obtain supervisory approval prior to attending seminars, lectures, meetings, training program, and similar activities.
- B. Attendance will be counted as time worked unless all four of the following criteria are met:
- Attendance is outside the staff member's regular working hours.
  - Attendance is voluntary and not required by the employer or perceived by the staff member as a condition of his/her employment.
  - The program is not directly related to the staff member's job.
  - The staff member does not perform any productive work during attendance.

**Section 39.12 Travel**

On occasion, non-exempt unit members may be required to travel on university business. The following table addresses the circumstances under which travel time is compensable or not compensable.

Travel Category	Compensable Time	Non-compensable Time
<b>Commuting</b>	<ul style="list-style-type: none"> <li>• Performing authorized work-related errands while commuting from home to work or from work to home.</li> <li>• Transporting or delivering materials or equipment to a job site prior to the start of the work day and/or returning materials or equipment after the end of the work day</li> <li>• Transporting other employees to work sites, to the office, or to their homes either before or after the workday at management request</li> </ul>	Ordinary travel from home to work (commuting time)
<b>Travel During the Work Day</b>		<ul style="list-style-type: none"> <li>• Time spent in travel as part of the member's principal job activity (i.e., travel between job sites).</li> </ul>
<b>One-Day Assignment in Another Town or City</b>	<ul style="list-style-type: none"> <li>• Time spent traveling to and returning from a one-day required assignment in another city or town regardless of whether employee is the driver or the passenger, regardless of whether the travel cuts across the normal work schedule.</li> <li>• Time spent at required conference, meeting, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Normal commuting time will be subtracted.</li> <li>• Time not worked even if it cuts across the employee's regular work schedule (e.g., employee goes sightseeing instead of attending a conference session, the conference sessions are only from 9a.m. to 3 p.m., etc.).</li> <li>• Meal periods and social activities where attendance is not required and work is not performed</li> </ul>

<p><b>Travel Away From Home Community (Overnight Travel)</b></p>	<ul style="list-style-type: none"> <li>• Any portion of authorized travel, including time spent waiting at an airport, bus station, etc., that cuts across a member's normal work schedule, including non-work days.</li> <li>• If an employee travels between two or more time zones, the time zone associated with the point of departure determines whether the travel falls within normal work hours.</li> <li>• Riding as a passenger when the member is required to perform work (for example, to serve as an assistant or helper, respond to email, take business-related phone calls, etc.).</li> <li>• Driving a vehicle, regardless of whether the travel takes place within or outside normal work hours.</li> <li>• Time spent attending authorized conferences, meetings, etc.</li> <li>• Required attendance at meals or meal breaks where work is performed.</li> <li>• Required attendance at social functions.</li> </ul>	<ul style="list-style-type: none"> <li>• Any portion of authorized travel, including time spent waiting at an airport, bus station, etc., that falls outside of normal work hours.</li> <li>• Riding as a passenger outside of normal work hours where work is not required.</li> <li>• Travel between hotel and meeting site.</li> <li>• If an employee drives a car as a matter of personal preference when an authorized flight or other travel mode is available and paying for travel by car would exceed the cost of the authorized mode, only the estimated travel time associated with the authorized mode will be counted as hours worked</li> <li>• If the University authorizes hotel accommodations for overnight travel but the employee prefers to drive home each evening.</li> <li>• Regular meal periods where work is not performed and attendance is not required.</li> <li>• Voluntary attendance at social functions.</li> <li>• Time spent outside of the conference or meeting (e.g., employee goes sightseeing instead of attending a conference session, the conference sessions are only from 9a.m. to 3 p.m., etc.)</li> <li>• Time spent sleeping</li> </ul>
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