OVERTIME QUESTIONS & ANSWERS

On-Call and Call-Back Time:

1. Q. Can Exempt employees be compensated for being on-call or for carrying a beeper?
   A. No, Exempt employees may be required to be on-call or to carry a beeper but no additional compensation may be provided.

2. Q. Can both Exempt and Non-Exempt employees be compensated for being called back to work in emergency situations after completion or prior to beginning their normal work schedule?
   A. No, Exempt employees are not compensated for being called back to work. Non-Exempt employees are compensated for being called back to work in accordance with appropriate policy and collective bargaining agreement provisions. For example, for SX employees, the employee shall be paid for the time actually worked upon return or a minimum of four hours, whichever is greater. Call-back time, whether worked or not, is considered time worked for the purpose of calculating hours of overtime. For HX employees, an employee called back to work shall be paid for the time actually worked upon return or a minimum of three hours, whichever is greater and is considered time worked for the purpose of calculating overtime, whether worked or not.

Travel Time:

3. Q. Do both Exempt and Non-Exempt employees count travel time as time worked?
   A. Exempt employees will not count travel time as time worked. For Non-Exempt employees, certain travel time can be considered hours worked as explained in Personnel Policies for Staff Members (PPSM) 31 and Travel Time provisions of collective bargaining agreements.

4. Q. Will Non-Exempt employees be compensated for travel time outside normal working hours when they are drivers, rather than passengers, of a car?
   A. As provided in policy, time spent in travel time away from home and outside normal working hours is not considered work hours, even when the employee is required to drive their own car. An exception to this would be if the driver were required to perform other duties at the same time, such as carrying tools or transporting passengers. Please refer to Travel Time provisions of collective bargaining agreements.

5. Q. Is it permissible to compensate Non-Exempt employees for overnight travel more generously than provided by the FLSA and University policy by paying for “time worked” outside of the regular work schedule?
   A. Overnight travel during non-work hours away from home does not constitute hours worked. Extra voluntary payment practices are discouraged because, while not against the law, they establish future expectations, and if a take-away becomes necessary; it might become a negative employee relations issue. Of course, if the employee actually “works” during the travel time, the time must be treated as time worked. Please refer to Travel Time provisions of collective bargaining agreements.

6. Q. If a Non-Exempt employee leaves Sunday night for a conference to begin Monday at 7:00 am, are they compensated for Sunday? (Assume the normal working hours are 8:00 am-5:00 pm Monday through Friday.)
   A. Weekend travel must be compensated if it occurs during normal working hours, or if the employee does actual work while traveling (paperwork on the plane). In this example, if the employee leaves for the conference at 7:00 pm, which is after normal working hours, no pay for travel time is due if the employee performs no work while traveling. Please refer to Travel Time provisions of collective bargaining agreements.

7. Q. If an Exempt employee works on a University holiday, can the employee receive additional compensation or CTO?
   A. No, Exempt employees do not receive any extra compensation or time off for extra hours worked.
Straight – Time Overtime:

8. Q. Personnel Policies for Staff Members (PPSM) 32C.4 refers to *straight time* overtime for Non-Exempt employees. How do these provisions relate to premium overtime pay and the compensatory time agreement election made by the employee? (Example: An employee works Tuesday through Friday, eight (8) hours per day, during a week in which Monday is a holiday. The employee then works an additional eight (8) hours Saturday. Per policy, the employee would receive straight time pay for the hours of Saturday work.)

   A. The compensatory time off agreement applies to both premium and straight overtime, however, FLSA does not regulate the compensation of straight time overtime pay. In this example, the employee would be compensated for the eight (8) hours of Saturday work hour-for-hour either in pay or compensatory time.

MANAGEMENT ISSUES

Costs & Budget:

9. Q. As a manager, how can I control costs?
   A. Strong managerial efforts will be needed to manage overtime worked. Advance approval should be required before overtime is worked and the number of hours worked should be limited.

10. Q. Are special supplemental funds available for non-budgeted premium overtime (e.g. positions funded by Contracts and Grants)?
    A. The University does not provide supplemental funds. It may be necessary to restructure work assignments and hours of work in order to limit the payment of premium overtime.

Employee Relations – Management of Overtime and Absences:

11. Q. How can I manage overtime when peak work periods occur during the year?
    A. According to the FLSA, work schedules of Non-Exempt employees should not be regularly adjusted to avoid the payment of premium overtime. Occasional work schedule adjustments are permitted.

12. Q. Since an Exempt employee’s time is not rigidly controlled by maintaining records of attendance, how do I address issues of work time and work absences?
    A. You may discuss the expectations of the position with the Exempt employee, including the need to be present in order to provide supervision to the staff or the need to arrive by a certain time in order to assure that the unit is properly staffed and operating. Discussions should focus on the responsibilities of the Exempt employee and how those expectations relate to time spent at work.
    You may also discuss your expectation that the Exempt employee needs to be present during certain days of the week in order to attend meetings, meet pre-determined deadlines, and to consult with her/his colleagues.

13. Q. What if the Exempt employee fails to maintain the schedule discussed above or fails to be present during crucial times of the year?
    A. You may then need to formally counsel or warn the employee about her/his failure to meet the performance expectations of the position. Ultimately, an employee could be dismissed for her/his failure to be present since the employee, if not present, cannot perform the job duties of the position.

14. Q. May I require an Exempt employee to inform me when she/he intends to be absent from the campus for several hours during a typical workday?
    A. Certainly you may ask any employee to inform you if she/he will not be at work during some hours of a typical workday. The information is necessary so that others who need to coordinate with that employee can be informed of the work schedule. It is also common courtesy. If an employee fails to keep you informed, you may discuss the matter with the employee emphasizing the performance-related aspects of the employee’s failure to keep you informed.
15. **Q.** Can supervisors and managers use records pertaining to time worked to document performance issues or scheduling concerns for Exempt employees as long as they are not used for pay purposes?  
**A.** Yes, provided that there is no connection or record between such documentation and the calculation or determination of the employee’s salary.

**Forty-Hour Work Week:**

16. **Q.** What if an Exempt employee consistently completes the work assignments in less than 40 hours per week? Or the employee only completes the assignments by working more than 40 hours in every week?  
**A.** In either scenario, there is a need to look at the work assigned and determine if it is a full-time position, if the employee is having time management problems, or if additional staffing is needed. There may be workload issues that require a workload evaluation and/or redistribution. Positions may require work beyond 40 hours on some regular basis but most employees should be able to complete their assignments within the 40-hour time frame.

**Overtime Worked Without Prior Authorization:**

17. **Q.** If a Non-Exempt employee works overtime without obtaining prior approval from her/his supervisor, is the unit obligated to compensate for that overtime?  
**A.** Overtime should always be authorized in advance by the supervisor. However, a liability is accrued when the employee works overtime, with or without supervisory knowledge. Unauthorized overtime must be paid. Continued unauthorized overtime can be dealt with as a disciplinary matter.

**Suspensions or Investigatory Leaves – FLSA Regulations**

18. **Q.** Why must Exempt employees be suspended for five (5) days unless the suspension is for an immediate safety threat? In the event such leave is necessary, why must an employee be placed on an investigatory leave for no less than five (5) days?  
**A.** Suspensions for five (5) days or more without pay are infrequent, but may be imposed for major misconduct or other significant performance issues. Investigatory leaves without pay are also infrequent. According to FLSA regulations, an employee's exempt status may be jeopardized if the employee is docked for time not worked in any workweek. An employee may, therefore, be docked for an entire workweek since, according to FLSA, docking is not an issue if there is no pay in a workweek. If an employee violates a safety rule of major significance she/he may be suspended for any amount of time, including a few days, without jeopardizing the employee’s exempt status.

For represented employees, refer to the appropriate policy and collective bargaining agreements since there is variation regarding the length of time of an investigatory leave, compensation, noticing, and employee response entitlement.

Note: Santa Cruz campus procedures provide for suspensions or investigatory leaves with pay under most circumstances.

**Exempt Employee Appointments – Less Than Full Time**

19. **Q.** Are variable appointments appropriate for Exempt employees?  
**A.** Although policy does not prohibit variable-time appointments, units are encouraged to eliminate formal variable-time appointments for Exempt employees wherever possible. Such appointments may present the appearance of hourly treatment (a condition appropriate for only Non-Exempt employees). The preferred approach would be to appoint an Exempt employee at 100%, or some lesser single percentage appointment, with the understanding that, as an Exempt employee, the individual is expected to work whatever amount of time (more or less) may be required at different times to fully accomplish assigned duties. Under no circumstances should hourly pay records be maintained for Exempt employees for purposes of receiving salary.
RECORDKEEPING

Timesheets:
20. Q. Can Exempt employees be asked to sign a timesheet?
   A. Yes. The Exempt employee records negative time or exceptional time (time off) that was used during the pay period, such as vacation, sick leave, or other leave, and records that time in one-day increments. This is consistent with the FLSA definition of an Exempt employee. Staff Human Resources has developed a Leave Use and Accrual Record for use in recording leave time used by all Exempt UCSC employees via a paper based system and an electronic timesheet for those employees using CruzPay.

21. Q. Can detailed records be kept by Exempt employees for other than compensation or salary?
   A. Yes, detailed records to the quarter hour can be kept for employees who charge a percentage of their salary to various grants or who work on a number of accounts and the work charged to each account varies.

Compensatory Time Off (CTO) Balances:
22. Q. What happens to CTO balances (banks) that Non-Exempt employees have accrued when they are reclassified to an Exempt position?
   A. Previously accrued hour-for-hour CTO banks will be carried forward in the “other leave” section of the “Control Office Use” section of the Leave Use and Accrual Record for use in whole day increments or cash out at the unit's discretion. Use the DOS code CTE when paying out compensatory time off to an Exempt employee.

23. Q. Does compensatory time off transfer when an employee changes units? Exempt position?
   A. Responsibility for compensating overtime rests with the unit in which it was earned. Accumulated compensatory time off shall be paid off when an employee leaves the unit in which the time was accrued, whether separating from the University or to take a position with a different unit. Comp time is not transferable from unit to unit.

Compensatory Time Agreements:
24. Q. Can an employee’s election under the compensatory time agreement be reviewed for change if there are substantial reasons to do so?
   A. Yes, the department can agree with the employee to change the compensatory time agreement election either way as circumstances might warrant. Although the agreement, as a term and condition of employment, is meant to have a degree of permanence (approximately one year), and should not be changed every time the employee works additional hours, it is not irrevocable.

   Note: this may differ for collective bargaining agreements wherein specific procedures have been established regarding compensatory time off agreements. Please review applicable collective bargaining contracts for details.

Sick Leave and Vacation:
25. Q. If an Exempt employee has two (2) hours sick leave or vacation balance and is absent for eight (8) hours, can you reduce the sick leave or vacation balance to zero? Do you pay the employee for the full day? Do you dock salary for six (6) hours?
   A. Reduce the sick leave or vacation bank to zero and dock salary for six (6) hours. The key point is that the Exempt employee was absent for a full day. The courts have expanded the concept of "salary deductions" as including deductions from both salary and leave banks. It is permissible to combine deductions from both--but only for full-day absences. Absences of less than a full day should not result in any leave bank or salary docking.

   If an Exempt employee works an alternate schedule, the number of hours scheduled for that day should be reported taken. Example: If the employee's normal work schedule were 9 hours, they would report 9 hours vacation taken.
26. **Q.** Can Exempt employees combine sick leave hours and vacation leave hours to cover an eight-hour absence?
   
   **A.** Yes, however, University policy discourages the use of sick leave to cover for vacation absences.

27. **Q.** When an Exempt employee is absent for illness for four (4) full days and there are twelve (12) hours in the sick leave bank, how many hours are docked from the employee’s salary?
   
   **A.** Debit the sick leave bank for twelve (12) hours and dock salary for the remaining time (two days, four hours). Thus: day 1 = 8 sick leave hours; day 2 = a combination of 4 hours sick leave and 4 hours salary docking; days 3 and 4 = salary docking for each full day.

28. **Q.** For record keeping purposes, can negative leave balances be recorded for Exempt employees? If yes, what happens upon termination?
   
   **A.** No, do not record negative leave balances. However, do note in some manner the combined docking of leave balances and salary for full-day absences as discussed in the two previous questions. During an audit, this type of record keeping will serve to confirm that docking was appropriate because the employee was absent for a full day.

**MISCELLANEOUS ISSUES**

**Alternate Work Schedule:**

29. **Q.** Prior to May 1, 1994, exempt employees on a 10/40 schedule received only eight (8) hours of holiday pay for any holiday falling on a scheduled work day and were required to use two (2) hours of vacation time. What should be done under the revised policies?
   
   **A.** These Exempt employees are no longer required to use vacation hours to cover the holiday; under no circumstances is pay to be docked for the two-hour holiday balance.

**Dual Employment:**

30. **Q.** Can an Exempt employee have dual employment at the University? If so, can the employee be paid differently each pay period based on the number of hours actually worked in the two appointments?
   
   **A.** An Exempt employee can have a dual appointment status. If both appointments are Exempt, however, the employee cannot be paid differently each pay period based on the number of hours worked because this would destroy the Exempt salary basis test. Each appointment should be established at a fixed percentage of time and paid a predetermined amount each pay period. If this is not possible, the employee may not be appropriately classified in an Exempt title. If this is the case, the position may need to be re-classified to a Non-Exempt position to ensure appropriate compensation.

31. **Q.** If an employee covered by Personnel Policies for Staff Members (PPSM) is 100% Non-Exempt also has a second appointment (dual employment), which may be either a staff or an academic appointment, how is overtime handled on the week when additional hours are worked in the second appointment?
   
   **A.** The employee must be compensated at the premium overtime rate for all hours worked, regardless in which appointment the additional hours were worked. Normally, the overtime hours must be recorded and compensated for the position in which the overtime was worked. However, if the second position is an academic appointment, overtime must be recorded for the staff position. Note: Dual appointments with different FLSA exemption status designations must be handled very carefully when determining the appropriate overtime compensation.
**Jury Duty:**

32. **Q.** Should jury duty be recorded hourly as administrative leave with pay for Exempt employees?

   **A.** No--leave for jury duty is specifically addressed in FLSA regulations: "It shall not be recorded." It is permissible to record it for non-pay purposes.

**Meal Periods:**

33. **Q.** Is the University required by law to provide a lunch period for Exempt employees?

   **A.** The FLSA does not require employers to provide a meal period for Exempt employees. The University has discretion to provide a meal period for Exempt employees. No time restrictions pertain to meal periods for Exempt employees.

**Reclassification:**

34. **Q.** When a Non-Exempt employee is reclassified to an exempt position with a retroactive effective date, what happens to the non-exempt premium overtime pay or CTO hours accumulated during the period when the reclassification was pending?

   **A.** The premium pay or CTO accumulated by the employee during the "reclassification pending" period is not forfeited--it is maintained for the employee subject to the applicable accrual caps and time limits. The employee should become subject to exempt policies and treatment as soon as feasible upon completion of the reclassification process. Refer also to Q & A number 22.

**Sample Overtime Compensation Notice**

Please reference the Staff Human Resources website for examples of the current Overtime Compensation Election Forms (CTO) Agreements.