

# Procedure: 4.2.1p. (III.U.3.A.) Working Hours, Overtime, and Compensatory Time

**Revised:** September 14, 2016; March 16, 2016; December 5, 2012;  
September 27, 2012; October 2, 2001  
**Last Reviewed:** September 14, 2016  
**Adopted:** July 1, 1987



## I.PURPOSE:

All employees of the Technical College System of Georgia are covered by the Wage and Hour provisions of the Fair Labor Standards Act unless specifically exempted. The Fair Labor Standards Act (FLSA or Act) of 1938, as amended, establishes minimum wage rates, maximum work hours, overtime pay requirements, equal pay standards, and child labor restrictions for employees covered by its provisions. Included are guidelines governing required record keeping for non-exempt employees.

Pursuant to State of Georgia policy, non-exempt, salaried employees shall receive FLSA Compensatory Time for all overtime hours worked.

In those unique circumstances in which the delivery of FLSA Compensatory Time is not a viable consideration, a TCSG work unit may request authorization from the TCSG Budget Office to deliver overtime payment(s) in cash. If the TCSG Budget office concurs, a written request shall be submitted to the Office of Planning and Budget (OPB) for review. Cash payment(s) for overtime hours worked shall not be initiated by a TCSG work unit unless formal OPB approval has first been obtained.

## II.RELATED AUTHORITY:

- Fair Labor Standards Act of 1938, as amended
- Office of Planning and Budget (OPB) Policy Governing Working Hours, Payment of Overtime, and the Granting of Compensatory Time

## III. APPLICABILITY:

All work units and technical colleges associated with the Technical College System of Georgia.

## IV.DEFINITIONS:

**Exempt Employees:** Employees who, because of their job duties, are not subject to the minimum wage, overtime and recordkeeping provisions of the Fair Labor Standards Act. Exemptions from the Act are narrowly defined and an employer must prove that the exemption rules apply.

**Hours Worked:** Generally, all time spent on an employer's premises or at a designated work place is considered "hours worked" when an employee is required or permitted to perform services of benefit to the employer, except for meal periods of at least thirty (30) minutes (in length) or other periods when the employee is entirely free from duty. Also included as "hours worked" is any work which the employee performs for the employer's benefit outside of established work hours on or off the employer's premises (i.e., time spent before, after, or between regular working hours). Unrecorded hours worked during a work week/work period by an employee on or off the employer's premises must be counted as "hours worked" if the employer knows or has reason to believe that the work is taking place and whether or not the work is performed with the employer's approval.

**Non-Exempt Employees:** Employees who are covered by or subject to the minimum wage, overtime and recordkeeping provisions of the Fair Labor Standards Act.

**Regular Rate:** The hourly rate used to calculate overtime payments. If an employee is paid solely at one hourly rate of pay (i.e., for hourly-paid staff in the System Office or technical college), this is the individual's "regular rate". The regular rate of a salaried employee is calculated by dividing the individual's total compensation (including annual salary and any additional salary supplements, shift differentials, etc.) by 2,080 hours. The regular rate for a P.O.S.T. certified law enforcement officer working a 207(k) schedule shall be determined pursuant to applicable provisions of the Office of Planning and Budget Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime and the Granting of Compensatory Time. *NOTE:* if an hourly-paid employee receives additional compensation, these monies are also factored into the calculating of his/her "regular rate".

**TCSG Work Unit:** the TCSG System Office, Quick Start headquarters, Quick Start regional offices or training centers, or an associated technical college.

## **V. ATTACHMENTS:**

- Attachment 4.2.1p.a1. Exemption Information Pertaining to Executive, Administrative, Professional and Computer Employees Under the FLSA
- Attachment 4.2.1p.a2. Understanding Concerning FLSA Compensatory Time
- Attachment 4.2.1p.a3. Sample Time Sheet

## **VI. PROVISIONS:**

### **A. Categories of Employees:**

1. Non-Exempt: those employees who are covered by or subject to the minimum wage, overtime and recordkeeping provisions of the Fair Labor Standards Act.
2. Exempt: those employees who, because of their assigned job duties, are not subject to the FLSA's minimum wage, overtime and recordkeeping provisions. Employees meeting the Act's criteria for executive, professional, administrative, computer and other defined exemptions are exempt from overtime compensation although their employment must comply with the record-keeping and equal pay requirements of the Act. Attachment 4.2.1p.a1. provides the guidelines to be

followed in determining those employees who are exempt from the overtime provisions of the Fair Labor Standards Act.

3. The designation of a position's exempt and non-exempt status shall be based on criteria established by and through the Regulations of the Fair Labor Standards Act to include a thoughtful analysis of each position's assigned duties and responsibilities. These exemptions are narrowly defined and if questions arise, the TCSG work unit must prove that the exemption rules apply. *NOTE:* a position's job title is not a factor in determining whether the position is determined to be exempt from the FLSA.
4. As a condition of employment, all newly hired employees must complete Attachment 4.2.1p.a2. (Understanding Concerning FLSA Compensatory Time).

**B. General Overtime Provisions of the FLSA and/or OPB Policy for State of Georgia Employees:**

1. Other than the exemption outlined below in Paragraph VI.B.2. all non-exempt employees must receive overtime compensation for all hours worked over forty (40) in a work week/work period.
2. A partial overtime exemption from the FLSA, [i.e., Section 7(k) is available to public agency employers utilizing law enforcement, fire protection, hospital, and nursing home employees. Overtime compensation is not required until the employee works more than the maximum number of hours in his/her designated work period.
3. Unless the provisions of Paragraph VI.O apply, overtime compensation for non-exempt, salaried employees shall be provided in FLSA compensatory time at a rate of one and one-half (1 ½) hours for each overtime hour worked. Overtime will be earned and compensated for in five (5) minute increments. As such, employee beginning and ending time should be rounded to the nearest five (5) minutes.
4. Time off for state holidays, paid leave (to include compensatory time off) is not counted as hours worked for the purpose of calculating overtime payments.
5. Overtime earnings, including FLSA compensatory time, must be calculated for each work week/work period. Hours cannot be averaged over two or more work weeks/work periods.
6. It is both permissible and recommended that a work schedule adjustment (i.e. equivalent time off) be provided during a work week/work period in which a non-exempt employee works the maximum hours prior to the end of the work period/work week. This alternative will ensure that overtime hours will not be worked and will avoid the necessity for delivery overtime compensation.

**C. Work Periods:**

1. Each TCSG work unit must establish a permanent work period for each employee. For purposes of this procedure, the standard work period for all non-law enforcement employees is a fixed period of seven (7) consecutive calendar days. These seven (7) days need not coincide with the calendar week and may begin on any day and at any time.
2. The work period for all P.O.S.T. certified law enforcement employees serving in a technical college police department shall be established as a fixed period ranging from seven (7) calendar days to twenty-eight (28) calendar days. These employees may have an established maximum hours worked ranging from 43 hours [for a seven (7) day work period] to 171 hours [for a twenty-eight (28) day work period].
3. An established work period may be modified if the change is intended to be permanent and is not adopted to evade the overtime pay requirements of the FLSA. Employees in the same TCSG work unit may have different work weeks/work periods, provided there is a business-related justification.
4. A fixed work period must be established in writing for all employees to include the day and time the work period begins and ends. This information must be maintained in the TCSG work unit's Office of Human Resources. *NOTE:* if the same work period is used for all non-law enforcement employees, a single statement may be developed.

#### **D. Hours Worked:**

1. With respect to non-exempt employees, work not requested but "suffered or permitted" is considered work time. This general rule also applies to work performed away from an employee's regular work place to include his/her home. If a TCSG work unit official has reason to believe that work is being performed, the hours must be counted.
2. In all instances, it is the responsibility of management to exercise its control and to ensure that work is not performed (by non-exempt employee) if it does not want the work performed.
3. As noted, non-exempt employees must be compensated for all work performed for which a manager, supervisor, or other work unit official knows or has sufficient reason to believe it was performed. Non-exempt employees who work additional hours without authorization are subject to disciplinary action consistent with the provisions of the State Board policy on Positive Discipline.
4. Non-exempt employees are required to report and document all hours worked – specifically hours worked each day and the total hours worked each work week/work period.

#### **E. Meal Periods:**

1. Although not mandated by the regulations of the Fair Labor Standards Act, and with the exception noted below, all full-time employees will be provided with an unpaid meal period as a part of their established work day.

2. The president (or his/her designee) of a technical college operating a campus police department may elect to waive the requirements of adding an unpaid meal period to the established work day for P.O.S.T. certified law enforcement employees.
3. Meal periods are not considered as “hours worked” provided a non-exempt employee does not perform any work. A meal period must be a minimum of thirty (30) minutes in length but may be longer at the discretion of management.
4. Meal periods should be scheduled in a manner that does not negatively impact work unit operations.
5. To limit the likelihood of a non-exempt employee performing work during his/her meal period, the employee should not be permitted to occupy his/her work station during the meal period.

**F. Breaks:**

1. Employees may be provided up to two (2) fifteen (15) minute breaks per work day. Breaks are considered as “hours worked” for compensation purposes.
2. If the use of formal breaks has been authorized, this time may not be used to lengthen a meal period, report late to work, or leave work early by working through a break period.
3. Given that break periods are a privilege for which an employee is compensated, no overtime or compensatory time is earned by an employee is required to work through one or more break period(s).

**G. Break Time for Nursing Mothers:**

1. A non-exempt employee must be provided a reasonable amount of time to express breast milk for her nursing child, as needed, throughout the work day. Break(s) for this purpose must be provided for a period of one (1) year after a child's birth.
2. For purposes of this policy, an exempt employee shall be provided the same opportunity to express breast milk as a non-exempt employee.
3. The TCSG work unit must provide adequate space, other than a bathroom, for this activity. The space must be shielded from view and free from intrusion from coworkers and the public.
4. A non-exempt employee is not entitled to compensation for breaks taken to express breast milk; however, if a work unit is currently providing or elects to provide compensated breaks, a non-exempt employee who uses her break time to express milk must be compensated in the same manner as other employees.

**H. Meetings or Training:**

1. Time spent by non-exempt employees attending meetings, work-related training and/or similar activities is compensable (i.e., considered “hours worked”) unless each of the following conditions are met:
  - a. The attendance is outside of the employee’s regular working hours;
  - b. Attendance is voluntary;
  - c. The meeting, training, etc., is not directly related to the employee’s current position and his/her assigned duties and responsibilities; and,
  - d. The employee does not perform any productive work related to his/her position while in attendance.

**I. On Call Time:**

1. Time spent “on call” is not considered “hours worked” unless an employee:
  - a. Is required to remain on the work premises; or,
  - b. Is so restricted that he/she cannot use his/her “idle time” effectively for his/her own benefit.
2. An employee who is merely required to carry a cell phone or other electronic device or provide his/her supervisor with contact information where he/she can be reached is not considered to be “at work” during the “on call” time period.
3. All time a non-exempt employee spends actually working while “on call” is considered as “hours worked” and must be recorded on his/her time records for the work week/work period in which these activities occur.

**J. Travel Time:**

1. Normal commuting time to and from work is generally not compensable and is not considered as “hours worked”.
2. Travel between a “normal” workplace, such as an office, and another place of assignment is usually considered as “hours worked”.
3. Travel between one assignment and another during a work day is compensable and is considered “hours worked”.
4. If travel time between a non-exempt employee’s home and the place of assignment on a one-day trip to another city (by an employee who normally has a fixed place of work) exceeds the time spent in the employee’s normal commute between home and work, all such excess time is compensable and is considered as “hours worked”.
5. If an employee leaves from his/her normal place of work rather than from home on a one-day trip to another city, the travel between home and the normal place of work is not considered “hours worked”.
6. Generally, overnight, out-of-town travel as a passenger (in a state vehicle, bus, airplane, or train) outside normal working hours does not have to be counted as

“hours worked”; however, it is the policy of the Technical College System of Georgia that such bona fide travel time of non-exempt employees will be considered “hours worked”.

7. If a non-exempt employee is required to drive a state or personal vehicle on an overnight, out-of-town trip, all time spent driving the vehicle on work-related business will be considered “hours worked”.
8. If a non-exempt employee is required to attend a meal or an associated activity event outside of his/her normal work hours, all such time will be considered “hours worked” and must be recorded on his/her time records for the work week/work period in which these activities occur.
9. For those occasions which require a non-exempt employee to stay overnight for one or more business days, all time spent outside of regular work hours is not compensable unless: the employee is performing work; required to attend a meal or event; or, the employee is unable to use his/her idle time for his/her own benefit due to restrictions placed on the employee.

#### **K. Management of Work Hours**

1. Supervisors are responsible for monitoring the arrival and departure times of non-exempt employees and periodically reviewing time records during each established work period/work week in an effort to minimize unplanned and/or unauthorized overtime hours. At the conclusion of each work period/work week, the employee’s immediate supervisor must sign/authorize the time sheet or electronically approve the time record.
2. All non-exempt employees must accurately record all hours worked, meal periods and leave taken on their designated time sheet or with a time clock or other time management system each work day. Hours worked outside scheduled work hours, including time spent on work-related telephone calls, must be recorded.
3. As provided in Paragraph VI.B.6. and when possible, the work schedule of a non-exempt employee should be adjusted during the work period to avoid overtime.
4. Falsification of time records, including the omission of hours worked, may result in disciplinary action.
5. Generally, supervisors should obtain approval from their reviewing manager or other management official before permitting a non-exempt employee to work overtime, absent an emergency situation. In such instances, the supervisor should notify his/her manager as soon as possible and thoroughly document the reasons for the overtime.

#### **L. FLSA Compensatory Time Accumulation and Recordkeeping:**

1. Non-exempt employees will be provided one and one-half (1 ½) hours of FLSA Compensatory Time for each overtime hour worked and may accumulate up to a maximum of two hundred and forty (240) hours. Any FLSA Compensatory Time.

Time accumulated in excess of this threshold must be delivered as a cash payment.

2. Non-exempt law enforcement officers may accumulate up to a maximum of four hundred and eighty (480) hours. Any FLSA Compensatory Time accumulated in excess of this threshold must be delivered as cash payment.
3. All accumulated FLSA Compensatory Time shall be recorded in the PeopleSoft HCM
4. Pursuant to FLSA regulations, the following records must be maintained regarding FLSA Compensatory Time:
  - a. The number of hours of compensatory time earned each work week/work period by each employee;
  - b. The number of compensatory time hours used each work week/work period by each employee;
  - c. The number of hours of compensatory time compensated in cash, the total amount paid and the date of the payment; and,
  - d. The written understanding or agreement regarding the earning and using of compensatory time off (Attachment 4.2.1p.a2)

#### **M. Use of FLSA Compensatory Time**

1. In lieu of using accrued annual leave for an authorized absence, a non-exempt employee must use his/her FLSA Compensatory Time unless he/she would forfeit annual leave as a result of this requirement. This is the only instance in which a non-exempt employee will be permitted to use accrued annual leave in lieu of accumulated FLSA Compensatory Time.
2. Non-exempt employees may request to use FLSA Compensatory Time in lieu of sick leave or personal leave; however, employees may not be required to use FLSA Compensatory Time in lieu of sick leave.
3. Non-exempt employees must be permitted to use accumulated FLSA Compensatory time within a reasonable period after making a request for time off from work if granting the request will not unduly disrupt the operations of the work unit.
4. If/when approved, an absence using accumulated FLSA Compensatory Time will be deducted from the employee's PeopleSoft balance in the same manner as any other leave deduction.

#### **N. Payment for Accumulated FLSA Compensatory Time:**

1. FLSA Compensatory Time cannot be transferred between state agencies/entities, TCSG colleges, or colleges and the System Office. In addition, a compensatory time balance cannot be retained by a non-exempt employee who accepts an exempt position in the same TCSG work unit (e.g. a promotion).



In these circumstances, the non-exempt employee shall be paid at the time of his/her transfer/reclassification for all accumulated, but unused, FLSA Compensatory Time. NOTE: The organizational unit from which the employee is transferring is fully responsible for the payment.

2. An employee ending his/her state employment through resignation, separation or retirement shall be paid for all accumulated, but unused, FLSA Compensatory Time.
3. The payment shall be delivered for each hour of accumulated, but unused, FLSA Compensatory Time at the higher of the following rates:
  - a. The average regular rate received by the employee during the last three (3) years of employment; or,
  - b. The final regular rate received by the employee
4. As needed and based on the availability of funds, the FLSA Compensatory Time balance of a non-exempt employee may be reduced or "cashed out" completely at any time as determined by the Commissioner, a technical college president, or his/her designee.

**O. Monetary Payment of Overtime:**

1. The cash payment of overtime to a non-exempt employee (either salaried or hourly-paid) may only be delivered after approval of the TCSG's Budget Office and the Office of Planning and Budget in the manner outline in Paragraph I of this procedure.
2. In those instances in which a continuing need for overtime has been identified, itemized funds for overtime payments must be requested and included in the Technical College System of Georgia's Annual Operating Budget.

**P. State Compensatory Time:**

1. State compensatory time may be granted to a non-exempt employee who remains in pay status for more than forty (40) hours in his/her established seven (7) day work period, but did not actually work more than forty (40) hours. State Compensatory Time apply to a non-exempt, P.O.S.T. certified law enforcement officer who remains in pay status but who did not work for more than the maximum number of hours in his/her work period. As an alternative, the TCSG work unit manager may elect to adjust the amount of leave to be charged to the employee during the work period, if such an adjustment will not result in the employee forfeiting leave or losing personal leave.
2. If authorized, State compensatory time shall be provided on an "hour for hour", straight time basis and an employee may not accumulate more than two hundred forty (240) hours.
3. Employees should be scheduled to use accumulated State compensatory time within sixty (60) calendar days if at all possible.

4. Any State compensatory time hours not used within one (1) year from the date earned will be lost. Additionally, an employee is not entitled to be paid for such hours.
5. State compensatory time cannot be transferred between state agencies or between TCSG work units.
6. State compensatory time should be tracked in the PeopleSoft HCM System and pursuant to OPB Policy, records regarding the accumulation and use of State Compensatory Time shall be managed in the same manner as FLSA Compensatory Time.

**Q. General Record-keeping Requirements Under the FLSA:**

1. All non-exempt employees must record, by time sheet, time clock, or other time management system, all hours worked each work day and each established work period/work week. NOTE: an employee's falsification of time records and/or the failure to record all hours worked in one or more work periods/work weeks may result in disciplinary action up to and including separation.
2. The FLSA required that all basic employment and earning records (including time records) must be maintained for at least two (2) years and that payroll records must be maintained for three (3) years. Additionally, each public agency must maintain records indicating the exemption status for each employee and documentation justifying each exemption decision. NOTE: specific State of Georgia recordkeeping requirements which exceed the noted federal requirements are outlined in the Georgia Archives' Retention Schedule for State Government Paper and Electronic Records

**VII.RECORD RETENTION:**

All employment-related documents generated or collected pursuant to this procedure shall be maintained in a manner consistent with the Georgia Archives' Retention Schedule for State Government Paper and Electronic Records

## **Attachment: 4.2.1p.a1.- Overtime Exemption Information**

### ***EXEMPTION OF EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, AND COMPUTER EMPLOYEES UNDER THE FLSA***

The exempt or non-exempt status of any particular employee must be determined on the basis of whether duties, responsibilities and salary meet the requirements for exemption. The employee's title or classification is of no significance in determining whether the tests are met.

It is the responsibility of the Agency Head, or their designee, to determine whether any exemption is applicable to particular employees.

Following is an outline of the terms and conditions to be followed in determining those employees exempt from the overtime provisions of the Fair Labor Standards Act.

#### **Executive Employees**

An employee is exempt as an executive, if he meets all these conditions:

- primary duty is management of an agency, institution or school, or a customarily recognized department or subdivision (i.e. a unit of permanent status and function thereof)
- customarily and regularly directs the work of two or more full-time employees or their equivalent (80 hours total)
- has authority to hire or fire, or his suggestions on hiring, firing, promotions or changes of employees' status carry particular weight
- exercises discretion and independent judgment in significant matters in carrying out the position's responsibilities
- is paid on salary basis at a rate of at least \$455 a week (\$23,660 annually), exclusive of board, lodging or other facilities

Primary Duty and Management – The policy requires that the primary duty of an executive employee must be management.

“Primary duty” means the principal, main or most important duty or responsibility of the employee.

Managerial duties take into consideration the frequency of the employee's use of discretion and relative freedom from supervision.

These are some of the functions that come within the scope of management: Interviewing, selecting and training of employees; setting and adjusting rates of pay and hours of work; directing work; maintaining production records for use in supervision or control; appraising productivity and efficiency for recommending promotions or other changes in status; handling complaints; disciplining employees; planning work; determining work techniques, controlling the flow and distribution of materials and supplies; and providing for the safety of workers and property.

If the executive employee is in charge of a division, rather than of the entire department, the division must be formally established, not simply a group of employees signed to a job. Usually, the division has a title, like “Shipping Division,” or “Accounting Division.”

Supervision of Other Workers – An executive employee must direct the work of two or more employees, that is, he must direct at least two full-time workers or the equivalent. For example, the test would be met if the employee directs (a) one full-time and two part-time workers, if total is 80 hours, one of whom works mornings and the other afternoons, or (b) four part-time workers two of whom work mornings and the others afternoons.

## **Attachment: 4.2.1p.a1.- Overtime Exemption Information**

The workers who are supervised must be employed in the department or sub-division that the executive employee is managing.

Moreover, an executive employee must be directly concerned either with the hiring or the firing and other change of status of the employees under this supervision, whether by direct action or by recommendation to those delegated to hire and fire.

Salary Requirement – Salaries paid monthly or semi-monthly that are equivalent to \$455 a week (\$23,660) are within the requirement. However, the shortest period of payment that will meet the requirement of pay on a salary basis is a week. Employees paid by the hour are not included in this exemption regardless of the fact that the amount paid them weekly far exceeds \$455; they are not paid on a salary basis. But a guarantee of \$455 a week in any week in which any work is performed may meet the salary requirement even though additional wages are paid on an hourly basis.

Salary Basis – Executive employees have to be paid on a salary basis to be exempt. The meaning of salary basis is most important. Salary basis means that the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation and the amount is not subject to reduction because of variations in the number of hours work in the workweek or in the quality or quantity of the work performed.

Work which tends to destroy the executive exemption is work which is not directly and closely related to his management duties. For example, although in a plant not large enough to employ a timekeeper or in which the timekeeping function has been decentralized, the supervisor of each department can keep basic time records of his own subordinates and count the work as management. The preparation of a payroll by a supervisor – even of the employees under his supervision would be non-management work because the preparation of a payroll does not aid the supervision of employees or the management of the department.

An executive employee may operate a machine for the purpose of instructing new employees without losing the exemption. Such work is considered a part of the supervisory duties and is exempt. But if he operates a machine to fill in time between supervisory duties or to assist other employees, such work is non-management work and could affect the issue of whether management is the employee's primary duty.

### **Administrative Employees**

An employee is exempt as an administrative employee, if he meets all these conditions:

- primary duty consists of performing office or non-manual work directly related to management or general business operations of the employer or its customers
- the primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
- is paid on salary or fee basis of at least \$455 a week (\$23,660 annually), exclusive of board, lodging, or other facilities

In general terms, administrative employees are sometimes referred to as staff (administration) rather than line (production) employees. "General business operations" refers to functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities. Examples of administrative employees may include credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

#### **Attachment: 4.2.1p.a1.- Overtime Exemption Information**

Remember that a title alone is of little or no assistance in determining an employee's exempt or non-exempt status. The status of the employee should be determined on the basis of whether his duties, responsibilities and salary meet all the requirements of the regulations.

**Primary Duty** – To qualify for exemption as an administrative employee, an employee must have as his primary duty office or non-manual work directly related to management or general business operations of his employer or his employer's customers. This condition is met by employees who participate in the formulation of management policies or in the operation of the business as a whole. It applies to those employees whose work affects business operations to a substantial degree even though their assignments are only for a particular segment of the business.

**Discretion and Independent Judgment** – These terms are interpreted to mean the authority to make an independent choice, free from immediate supervision, in significant matters. They should not be confused with the use of skill in applying techniques, procedures, or specific standards.

**Matters of significance** – refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independence with respect to matters of significance simply because improper performance of the employee's duties may cause serious financial loss to the agency.

**Example 1:** Inspectors normally do specialized work along standardized lines involving well-established techniques and procedures that may have been catalogued and described in manuals or other services. These inspectors use skill rather than discretion and judgment.

**Example 2:** A shipping clerk is normally permitted to decide the method of packing and the mode of shipment of small orders, and a bookkeeper may decide whether he will post first to one ledger rather than another. These decisions do not deal with significant matters.

Decisions by an employee need not have a finality that goes with unlimited authority and a complete absence of review. It is alright for the decisions to consist of recommendations for action or to be subject to review.

**Salary Requirement** – The \$455 weekly (\$23,660 annually) salary requirement for administrative exemption is met if the employee is compensated bi-weekly on a salary basis of \$910, semi-monthly on a salary basis of \$985.83 or monthly on a salary basis of \$1971.66.

#### **Professional Employees**

An employee is exempt as a professional employee, if he meets all these conditions:

- primary duty is work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment.
- the advanced knowledge must be in a field of science or learning, customarily acquired by prolonged specialized instruction, as distinguished from general academic education (doctors, lawyers, engineers, chemists, nurses, etc.). As an alternative to the above, the primary duty may be (a) work that is creative and original (artists, writers, musicians, actors, certain radio and television announcers, etc.) or (b) work as a teacher in an educational establishment with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge.
- is paid on salary or fee basis of not less than \$455 a week (\$23,660 annually). (This salary or fee requirement does not apply to an employee who is holder of valid license or certificate permitting practice of law or medicine, or in the case of interns or resident physicians, or employees employed and engaged as teachers in activities referred to in (b) above)

### **Attachment: 4.2.1p.a1.- Overtime Exemption Information**

Learned Profession – The learned professions are described as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

These points should be noted:

1. The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree.
2. However, the word "customarily" means that the exemption is also available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry.
3. The exemption does not apply to entire occupational groups regardless of the specific duties of the particular individual. For example, exemption of an accountant must be determined on the basis of the individual accountant's duties and other qualifications.

Artistic Professions – The requirements for the artistic type of professional work are that the work has to be original and creative in character in a recognized artistic field and the result of which must depend primarily on the invention, imagination, originality, or talent of the employee. This exemption includes such fields as music, writing, acting, and the graphic arts.

### **Computer Employee Exemption**

An employee is exempt under the computer employee exemption if the employee:

- is employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field with one of the following as the employee's primary duty:
  - 1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  - 2) the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or
  - 3) the design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - 4) a combination of the aforementioned duties, the performance of which requires the same level of skills.
- is compensated either on salary or fee basis at a rate not less than \$455 per week **or** is compensated on an hourly basis, at a rate not less than \$27.63 an hour.

Employees primarily involved in the manufacture or repair of computer hardware and related equipment do **not** qualify for the computer employee exemption. Employees whose work is highly dependent on computer software programs but not primarily engaged in computer systems analysis and programming or

**Attachment: 4.2.1p.a1.- Overtime Exemption Information**

other similarly skilled computer-related occupations are also **not** eligible for the computer employee exemption.

**Highly Compensated Employee Exemption**

Highly Compensated Employees – Employees that perform office or non-manual duties and are paid a total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) and regularly perform at least one of the duties of an exempt executive, administrative or professional employee as identified in the exemption tests specified in this document.

**EXECUTIVE EXEMPTION CHECKLIST**

1. Does the employee receive a salary of at least \$23,660 annually (\$455 per week)?  
 Yes – go to #2  
 No – Not executive exempt (go to Administrative or Professional Checklist)
  
2. Is the employee’s primary duty - the management of a customarily recognized sub-division of the department?  
 Yes – go to #3  
 No – Not executive exempt (go to Administrative or Professional Checklist)
  
3. Does the employee customarily and regularly supervise two or more full time employees?  
 Yes – go to 4  
 No – Not executive exempt (go to Administrative or Professional Checklist)
  
4. Does the employee have the authority to hire or fire other employees or are the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees given particular weight?  
 Yes – Exempt - Executive  
 No – Not executive exempt (go to Administrative or Professional Checklist)

**PROFESSIONAL EXEMPTION CHECKLIST**

1. Does the employee receive a salary (or fee basis pay) of at least \$23,660 annually (\$455 per week)?  
 Yes – go to #2  
 No – Not executive, professional or administrative exempt.
  
2. Is the employee’s primary duty that of a professional either in (a) a learned profession or (b) an artistic profession? (see commentary for definitions)?  
 Yes – go to #3  
 No – Not professional exempt (go to Executive or Administrative Checklist)
  
3. Is the employee’s work primarily intellectual and does it require the consistent exercise of discretion and judgment?  
 Yes – Exempt – Professional  
 No – Not professional exempt (go to Executive or Administrative Checklist)

**Attachment: 4.2.1p.a1.- Overtime Exemption Information**

**ADMINISTRATIVE EXEMPTION CHECKLIST**

1. Does the employee receive a salary (or fee basis pay) of at least \$23,660 annually (\$455 per week)?

Yes – go to #2

No – Not executive, professional, or administrative exempt

2. Is the employee's primary duty office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers?

Yes – go to #3

No – Not administrative exempt (go to Executive or Professional Checklist)

3. Does the employee exercise discretion and independent judgment in significant matters?

Yes – Exempt – Administrative

No – Not administrative exempt (go to Executive or Professional Checklist)

**COMPUTER EMPLOYEE CHECKLIST**

1. Does the employee receive a salary of at least \$455 per week (\$23,660 annually) or an hourly rate of at least \$27.63 or more?

Yes – go to # 2

No – Not Computer exempt

2. Does the employee work as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field performing one of the following as the employee's primary duty:

- The application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specifications;
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- A combination of the aforementioned duties, the performance of which requires the same level of skills.

Yes – Computer Employee Exemption

No – Not Computer exempt

The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.



# TECHNICAL COLLEGE SYSTEM OF GEORGIA

## UNDERSTANDING CONCERNING FLSA COMPENSATORY TIME

I, \_\_\_\_\_, acknowledge and understand that as part of the terms and conditions of my employment with the \_\_\_\_\_ (work unit/ technical college) of the Technical College System of Georgia, I may be required to work more than forty (40) hours in a work week/work period.

I further understand that if I am a non-exempt employee, I will receive FLSA compensatory time in lieu of overtime compensation in cash for all overtime hours worked. The FLSA compensatory time will be calculated at the rate of time and one-half hours for each hour of employment for which overtime compensation is required by the Fair Labor Standards Act of 1938 (FLSA).

I further understand that if I am an exempt employee, I am not entitled to FLSA compensatory time or any additional compensation in any form for any additional hour(s) worked.

If employed in a non-exempt position, I understand that I must at all times maintain an accurate and truthful record of my hours worked each day and each established work period by signing in and signing out, referencing my meal period, and recording all hours I am on paid or unpaid leave.

Lastly, I understand that as a condition of employment I must sign this acknowledgment statement. If I am unsure of my FLSA status, I will check with the Office of Human Resources in the System Office or, as applicable, my employing technical College.

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Date

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Employee Signature

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I am requesting overtime of \$\_\_\_\_\_ (State) and \$\_\_\_\_\_ (federal) be approved for the \_\_\_\_\_ activity as follows:

(1) Purpose of Overtime:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Number of Positions	Job Classification	FLSA Status		Overtime Hourly Rate	Overtime Hours Requested	Total Cost of Overtime Hours
		Exempt	Nonexempt			
<b>TOTAL REQUESTED</b>					<b>\$</b>	

Funding of this request comes from: (Check one)

\_\_\_\_\_ (1) Current Personal Services Surplus

\_\_\_\_\_ (2) Other: \_\_\_\_\_

\_\_\_\_\_  
 Requested by

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 OPB Director/ Division Director Signature

\_\_\_\_\_  
 Date

These figures are to include cost of fringes associated with the overtime hourly rate.

**NOTE: Submit two copies.**