

**THREE RIVERS COLLEGE
PERSONNEL REGULATION**

Section: 4000 Personnel	
Sub Section: 4500 Compensation	
Title: PR 4506 Overtime and Compensatory Leave	Page 1 of 12
Primary Policy: PP 4506 Overtime and Compensatory Leave	
Associated Policy: GAP 1107 Disruption in Normal College Operations	
Associated Regulation: FR 3510 Travel Authorization and Reimbursement	
References: Federal Fair Labor Standards Act	
Supersedes: NA	
Responsible Administrator: Director of Human Resources	
Initial Approval: 12-16-2009	Last Revision: 05-20-2020

The Federal Fair Labor Standards Act (the “Act”) was enacted by Congress to regulate such employment matters as hours of work, minimum wage, overtime compensation, and other conditions of employment. The Act, in conjunction with the regulations set forth by the Wage-Hour Division of the Department of Labor, also promulgates requirements related to the posting of notices, the preservation and location of records, and the record keeping requirements for employers. The Act further establishes specific criteria regarding whether employees are exempt or non-exempt for minimum wage, overtime, and compensatory leave.

Provisions of this Regulation shall be read in conjunction with Policy PP4506. In all instances where Regulation PR4506 fails to address or is inconsistent with provisions of the Act, the Act will control.

Definitions

The following definitions shall be used for the overtime, wage, and hour policies of the College:

- A. Hours Worked – time for which an employee is entitled to be compensated. Employees must be compensated for time they are suffered or permitted to work. Hours worked may include time spent in incidental activities as well as in productive labor. Work a supervisor permits must be counted as hours worked. It is the duty of the supervisor to exercise control so that only authorized work is performed. The overtime provision of the Act allowing for compensatory leave is earned when a non-exempt employee actually works more than forty (40) hours in a given workweek. This does not include hours paid an employee for non-working hours (i.e., sick, vacation pay).

- B. Workweek – the fixed and regularly recurring period of 168 hours, seven consecutive twenty-four-hour periods. For the purpose of this regulation, the normal workweek constitutes the period of time between 12:01 a.m. Sunday through 12:00 a.m. the following Sunday. Hourly and salaried non-exempt employees may be scheduled to work any forty (40) hours or any combination of work hours not in excess of forty (40) hours per period. Public Safety Officer hours will be determined on a “work period” basis as defined by the FLSA and law enforcement officers.

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- C. Overtime – hours actually worked in excess of forty (40) hours per workweek. The College does not pay overtime compensation for work on Saturdays, Sundays, or holidays, except when the number of hours actually worked in a single workweek exceeds forty (40) hours.
- D. Overtime Compensation – Overtime credit will be given only after a non-exempt employee completes, or is credited with, forty (40) hours of actual work in any workweek. When a non-exempt employee has amassed more than forty (40) hours in a workweek, the non-exempt employee will be paid overtime compensation of at least one and one-half times (1½) the regular rate of pay for **all hours worked** in excess of forty (40) hours in that workweek.
- E. Compensatory Leave – hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee’s regular rate. Leave shall be given at a rate not less than one and one-half (1½) hours for each hour actually worked.
- F. Each Workweek Stands Alone – The Act takes a single workweek as its standard and does not permit averaging of hours over two (2) or more weeks. Thus, if a non-exempt employee works thirty (30) hours one week and fifty (50) hours the next, he/she must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the two (2) weeks is forty (40).
- G. Record Keeping Requirements – The Act requires that records regarding employees such as wages, hours, and other related items including overtime and compensatory leave be retained by the College for a minimum of three (3) years. Accurate records of actual hours worked must be completed on a daily basis. For a week when an employee works less than their scheduled time, some type of leave must be recorder on the appropriate leave form (i.e., compensatory leave, vacation, sick, or personal).

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1. In order to use earned compensatory leave, the employee must complete the Request for Leave form. Vacation leave, sick leave scheduled in advance (i.e. doctor's appointments, dental appointments, elective procedures, etc.), and compensatory leave must be requested ten (10) college working days in advance. Requested leave is subject to the approval of the immediate supervisor and applicable cabinet member. Approval of requests without ten (10) working days prior notice is subject to the approval of the appropriate cabinet member. Such requests must include full explanation of the reasons resulting in failure to provide proper notice.
 2. The required documents for record keeping will be retained in the payroll office and will be the joint responsibility of the supervisor and the payroll office. The compensatory leave exhausted shall be recorded on the Request for Leave form by the employee, reviewed by the supervisor and appropriate cabinet member, and if approved, sent to the payroll office.
 3. Accumulated compensatory leave must be used first in lieu of vacation/annual, sick, sick bank pool, or personal leave.
 4. If overtime pay is sought in lieu of compensatory leave it must be pre-approved by the college president and recorded on the appropriate time sheet and the overtime work request form.
- H. Maximum Compensatory Leave – The Act states that an employer **may** permit employees to accrue a maximum of 240 hours of compensatory leave (160 overtime hours worked) before the employee must be paid overtime premiums in cash.
- I. Saturdays, Sundays and Holidays – The College does not provide overtime compensation for hours in excess of eight (8) per day or for work on Saturdays, Sundays, and holidays or regular days of rest unless the employee has worked in excess of forty (40) for the workweek. If no more than forty (40) hours in any workweek are actually worked, overtime compensation will not be paid.

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- J. Short-term Closure for Weather and Emergency Events (less than five working days) – For employees performing essential duties on and required to report to work during weather related or emergency event closures as determined by the College President, compensation will be provided for the normal eight-hour workday. In addition, the employee will be compensated at the appropriate overtime or compensatory rate for actual time worked.

- K. Long-term Closure Weather and Emergency Events (more than five working days) – For employees performing essential duties on and required to report to work during weather related or emergency event closures as determined by the College President, compensation will be provided for the normal eight-hour workday, without additional compensation.

- L. Extraordinary Circumstances – When conditions require substantial changes to the work environment and alternative work arrangements, determinations will be made by the College President with regard to essential duties, alternative work methodologies, and operational status to best ensure the safety of the students, employees, and College while maintaining College operations.

Eligibility

Only non-exempt employees are eligible to receive overtime compensation and compensatory leave. Employees are considered non-exempt unless their position meets one of the exempt definitions as an executive, administrative, learned professional, creative professional, highly compensated or exempt computer employee and the activities directly and closely related to such work.

Salary Basis Requirement

To qualify for exemption, employees are paid at a rate defined by the Department of Labor Hour and Wage Division. These salary requirements do not apply to teachers and employees practicing law or medicine.

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Executive Employee Exemption

- 1) To qualify for the Executive Employee Exemption, all of the following tests must be met:
- 2) The employee must be compensated on a salary or fee basis at a rate no less than the rate defined by the Department of Labor Hour and Wage Division.
- 3) The employee's primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise;
- 4) The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- 5) The employee must have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Employee Exemption

To qualify for the administrative employee exemption, all of the following tests must be met:

- 1) The employee must be compensated on a salary or fee basis at a rate no less than the rate defined by the Department of Labor Hour and Wage Division.
- 2) The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- 3) The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Employee Exemption

To qualify for the learned professional employee exemption, all of the following tests must be met:

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- 1) The employee must be compensated on a salary or fee basis at a rate no less than the rate defined by the Department of Labor Hour and Wage Division;
- 2) The employee's primary duty must be the performance of 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;
- 3) The advanced knowledge must be in a field of science or learning; and
- 4) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the creative professional employee exemption, all of the following tests must be met:

- 1) The employee must be compensated on a salary or fee basis at a rate no less than the rate defined by the Department of Labor Hour and Wage Division.
- 2) The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Highly Compensated Employee Exemption

To qualify for the highly compensated employee exemption, the following tests must be met;

- 1) The employee must be compensated on a salary or fee basis at a rate no less than the rate defined by the Department of Labor Hour and Wage Division.
- 2) The employee is compensated with a total annual compensation of a rate no less than the rate defined by the Department of Labor Hour and Wage Division and is deemed exempt under the provisions of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee.

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Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- 1) The employee must be compensated on a salary or fee basis at a rate no less than the rate defined by the Department of Labor Hour and Wage Division.
- 2) The employee must be compensated either on a salary or fee basis at a rate no less than the rate defined by the Department of Labor Hour and Wage Division, or if compensated on an hourly basis, at a rate not less than \$27.63 an hour.
- 3) The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below; and
- 4) The employee's primary duty must consist of:
 - a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - b) 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;
 - c) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - d) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Employees who satisfy the definitions established for these exemptions (exempt employees) are not to be paid the statutory minimum wage and are not to be compensated for hours worked in excess of forty (40) hours per workweek.

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If it becomes difficult to determine the status of a particular employee, a careful analysis of the employee's duties directly and closely related to the work described will usually be necessary in arriving at a satisfactory determination of the employee's status. Job descriptions and employment conditions will be periodically reviewed to ensure the status of an employee is current with the provisions of the Act.

Overtime and compensatory leave are earned based upon hours actually worked over forty (40) hours in a designated workweek. **Work over forty (40) hours a workweek is not to be performed at the discretion of the employee.** All work over forty (40) hours during a designated workweek must be approved and scheduled in advance by the employee's supervisor and the appropriate cabinet member. Non-exempt employees who work in excess of forty (40) hours without authorization from a supervisor will be compensated for their work but will be subject to disciplinary action up to and including termination.

Approval of Overtime/Compensatory Leave

Working unauthorized overtime is prohibited. Non-exempt employees may not work over forty (40) hours per workweek without written authorization as outlined in this regulation. Non-exempt employees who work unauthorized overtime and supervisors who permit employees to work overtime without appropriate authorization are in violation of this regulation and subject to disciplinary action up to and including termination.

During peak workload periods, unexpected events, and registration periods, overtime work for hourly and salaried non-exempt employees may be required. The College may request that employees work overtime due to the special needs of a particular department. Supervisors will give as much notice as possible to employees when overtime work is anticipated. Advance notice, however, may not always be possible. Refusal to work mandatory overtime will be grounds for disciplinary action up to and including termination.

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Accrual of Compensatory Leave

All compensatory leave shall be used prior to the next pay period in which it was earned and, when present, be used in lieu of all other types of leave.

The next pay period rule must be viewed with good judgment by the supervisor. It is the objective of the College to grant time off in a reasonable amount of time without permitting the accrual of hours to become excessive.

In cases where a supervisor cannot allow the employee to take time off prior to the next pay period, written justification must be provided to the appropriate cabinet member. The cabinet member will either recommend the payment of overtime or will authorize that the compensatory leave be held and used within the next pay period. In no case shall compensatory leave be held for more than one additional pay period without the written approval of the college president. In cases where the payment of overtime is recommended, written approval of the college president is required.

Rate of Payment of Accrued Compensatory Leave

If compensation is paid to a non-exempt employee for accrued compensatory leave, such compensation shall be paid at the regular rate earned by the employee at the time the compensatory leave was earned.

Monitoring of Overtime and Compensatory Leave

Overtime and compensatory leave shall be closely monitored. **It is the responsibility of the supervisor to monitor and record the employee's hours of work and leave requests.** It is the responsibility of the supervisor to ensure all appropriate paperwork is submitted expeditiously so that proper compensation can be made.

Travel for Non-Exempt Employees

Because of the complexity in accounting for time worked of non-exempt employees during travel, the following examples are provided:

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The College's normal work hours/normal workweek days are defined as Monday through Friday, 8:00 a.m. - 5:00 p.m. with an hour for lunch.

Travel during the normal work hours/normal workweek days, but not overnight

When an employee is required to travel during what would be considered his/her "normal workday", whether the employee is driving or is just a passenger on the trip, that time is considered time worked and recordable. If the person is on a regular meal period or other free period, this is not considered time worked. When travel that occurs in one day is performed for the employer's benefit and at the employer's request, it is considered part of the "principal activity" of the employer and would be considered compensable. However, for travel that occurs in one day, not all time needs to be counted as hours worked. The employee's typical "home-to-work" commute duration may be deducted.

Example: A non-exempt employee drives to work to meet a group of employees at 7:00 a.m. The group drives (whether in a personal or college owned vehicle) to the destination. The employees return from the destination, drop the vehicle off at work at 9:00 p.m. and then return home. Employee must be paid 13 hours, regardless of the employees' status as a driver or as a passenger. (14 hours – 1 hour for lunch, assuming a lunch is taken – no drive time deduction).

Travel that extends into an overnight stay during the normal work hours/outside of the normal workweek days

Events carry a special requirement from the Wage and Hour Division Regulations. For this type of travel, all of the above elements of the travel for "normal work hours/normal workweek days" still apply to the time considered normal workdays. All of the traveling during the normal workdays, but outside of the normal work hours also applies. But – For the days that has the employee "out of town" that extends into the area of "outside of the normal workweek days", the employee's time is recordable, regardless of work assignment for the hours within the "non-standard days" that would match with the "normal work hours" of the "normal workweek".

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Example: Employee A has a normal workweek of Monday through Friday and normal hours of 8:00 a.m. to 5:00 p.m. with a one-hour break for lunch. During this particular period, **Employee A** must leave town on Monday at 3:00 pm and does not return home until Sunday Noon. The hours from 3:00 pm until 5:00 pm on Monday would be considered recordable time worked (within his normal hours, and within his normal workweek). The balance of his time from 5:00 pm on Monday until 8:00 am on Tuesday would not be recordable unless he is working for the College. The time between 8:00 am until 5:00 pm on Tuesday, Wednesday, Thursday, and Friday (normal hours of work during normal days of work) would all be considered recordable time. Outside of these hours on these days, it would be only recordable time if the employee is working. On Saturday from 8:00 a.m. through 5:00 p.m. and on Sunday from 8:00 a.m. through noon, it would be recordable time since this is within the “normal work hours” of a standard workday for the employee. The balance of the time on Saturday and Sunday (before the start of the normal work hours or after normal work hours on Saturday) would depend on the activities of the employee, as noted above regarding travel.

Non-exempt Employee Electronic Communications

As with other types of unauthorized work, all time spent by nonexempt employees utilizing electronic communications for work purposes will be considered hours worked, is compensable and count toward overtime eligibility as required by law. Therefore, in order to avoid incurring unnecessary expenses, electronic communications should not be used outside of regularly scheduled work hours unless required by the supervisor. This includes all types of work-related communication.

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DOCUMENT HISTORY:

- 12-16-2009:** Initial approval of regulation PR 4506 Overtime and Compensatory Leave.
- 11-22-2013:** Paragraph deleted:
- If a night shift overlaps the end of one workweek and the beginning of the next workweek, then hours worked should be recorded in the workday/week in which the shift began.
- Full-time employees working thirty-five (35) hour workweeks are not eligible for overtime compensation until more than forty (40) hours are actually worked. Thirty- five (35) hour employees will be compensated at their regular hourly rate until more than forty (40) hours are actually worked in a designated workweek.
- Statement Added:
- Public Safety Officer hours will be determined on a “work period” basis as defined by the FLSA and law enforcement officers.
- 09-10-2016:** Added new reference: FR 3510 Travel Authorization and Compensation, added statement for clarification regarding Non-Exempt Employee travel and statement as follows: “The employee must be compensated on a salary or fee basis at a rate no less than the rate defined by the Department of Labor Hour and Wage Division.”
- 09-21-2016:** The College Board of Trustees approved the name change of the college from Three Rivers Community College to Three Rivers College.
- 05-20-2020:** Expansion of PR 4506 Overtime and Compensatory Leave to include different classifications of disruption to normal college operations, as well as college closures and event cancellations.