
Pay Increases	An ESC shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. <i>Tex. Const. Art. III, Sec. 53</i>
Salary Advances and Loans	An ESC shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. <i>Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.-Houston [1st Dist.] 1976, no writ)</i>
Designation of Compensation for Benefits	An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee's compensation to be used as health-care supplementation. The amount designated under this section may not exceed the amount permitted under applicable federal law. <i>Education Code 22.103</i>
Use	An employee may use the compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. <i>Education Code 22.106</i>
Annual Election	Each school year, an active employee must elect in writing whether to designate a portion of the employee's compensation to be used as health-care supplementation. The election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. <i>Education Code 22.105</i>
Definition	For purposes of the designation of compensation as health-care supplementation, "employee" means an active, contributing member of the Teacher Retirement System (TRS) who: <ol style="list-style-type: none">1. Is employed by an ESC;2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and4. Is not an individual performing personal services for the ESC as an independent contractor. <i>Education Code 22.101(2)</i>

Fair Labor Standards Act	Unless an exemption applies, an ESC shall pay each of its employees not less than minimum wage for all hours worked. <i>29 U.S.C. 206(a)(1)</i>
Minimum Wage and Overtime	Unless an exemption applies, an ESC shall pay an employee not less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 in any workweek. <i>29 U.S.C. 207(a)(1); 29 C.F.R. Part 778</i>
Breaks for Nonexempt Employees	Rest periods and break periods are not required by the Act. If an ESC grants its employee(s) a rest period, rest periods of up to 20 minutes must be counted as hours worked. Coffee breaks or time for snacks are rest periods, not meal periods. <i>29 C.F.R. 785.18</i>
Meal Periods	Bona fide meal periods of 30 minutes or more are not counted as hours worked if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his or her desk is working while eating. It is not necessary that an employee be permitted to leave the premises if the employee is otherwise completely freed from duties during the meal period. <i>29 C.F.R. 785.19</i>
Compensatory Time <i>Accrual</i>	<p>Nonexempt employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-half hours for each hour of overtime work, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Such agreement or understanding may be informal, such as when an employee works overtime knowing that the employer rewards overtime with compensatory time.</p> <p>An employee may accrue not more than 240 hours of compensatory time. If the employee's overtime work included a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time. After the employee has reached these limits, the employee shall be paid overtime compensation for additional overtime work.</p>
<i>Payment for Accrued Time</i>	Compensation paid to an employee for accrued compensatory time shall be paid at the regular rate earned by the employee at the time of payment. An employee who has accrued compensatory time off shall be paid for any unused compensatory time upon separation from employment at the rates set forth at 29 U.S.C. 207(o)(4).
<i>Use</i>	An employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the ESC.

The Fair Labor Standards Act (FLSA) does not prohibit an ESC from compelling the use of accrued compensatory time.

29 U.S.C. 207(o); Christensen v. Harris County, 529 U.S. 576 (2000); Houston Police Officers' Union v. City of Houston, 330 F.3d 298 (5th Cir. 2003)

Exempt Employees

ESC employees determined to be employed in a bona fide executive, administrative, or professional capacity as defined in federal regulations are exempt from the FLSA and therefore are not covered by the Act's minimum wage and overtime pay provisions. Employees are exempt from the Act only if they meet the specific federal tests for executive, administrative, or professional employees.

Tests for Exemption

Generally, an employee is exempt if the employee's primary duty is executive, administrative, or professional as defined in the federal regulations, and the employee is compensated "on a salary basis" at a weekly rate not less than the rate specified in the regulations.

29 C.F.R. 541.1-541.3

Teachers Exempt as "Bona Fide Professionals"

An "employee employed in a bona fide professional capacity" includes any employee whose primary duty consists of the performance of "[t]eaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which he or she is employed." *29 C.F.R. 541.303*

Payment on Salary Basis

The shortest period of payment that will meet the requirement of payment "on a salary basis" is a week. *29 C.F.R. 541.602(a)*

Safe Harbor Policy

If an ESC has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the ESC will not lose the exemption unless the ESC willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

The best evidence of a clearly communicated policy is a written policy that was distributed to employees before the improper pay deductions by, for example, providing a copy of the policy to employees upon hire, publishing the policy in an employee handbook, or publishing the policy on the ESC's intranet.

29 C.F.R. 541.600, .602(a), .603

Weekly Wage Basis

The compensation of employees not exempt under the FLSA must be figured on a weekly basis to determine whether the employee is paid at least minimum wage each week. ESCs may not average

the hours worked by an employee over two or more weeks in order to ensure that the employee's weekly compensation meets the minimum wage requirement. *29 C.F.R. 778.104*

Recordkeeping

ESCs must keep information specified in federal regulations pertaining to each nonexempt employee. This includes specific information regarding the employee's identity, hours worked, and wages paid. These records must be retained for three years. Records on which wage and hour computations are based, such as earnings records and work schedules, must be kept for two years. *29 C.F.R. 516.5, .6*

TRS Contributions for New Hires

During each fiscal year, an ESC shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, during their first 90 days of employment.

"New member" means a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Government Code 822.003 and is reemployed on or after September 1, 2005.

On a monthly basis, an ESC shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and
2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

An ESC must remit the amount required under this section to TRS at the same time the ESC remits the member's contribution. In computing the amount required to be remitted, an ESC shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

Gov't Code 825.4041

TRS Surcharge for Rehired Retirees

TRS Fund
Contributions

During each payroll period for which a retiree is reported, an ESC shall contribute to the retirement system for each retiree reported an amount based on the retiree's salary equal to the sum of:

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and
2. The current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.

Gov't Code 825.4092(b)

Health Insurance
Contributions

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), an ESC shall contribute to the TRS Care trust fund an amount established by TRS. In determining the amount to be contributed by the ESC, TRS shall consider the amount a retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers.

Exception

An ESC is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005.

Gov't Code 825.4092(c), (e); Insurance Code 1575.204(b)

**Annualized
Compensation**

In an ESC that annualizes compensation (for example, a teacher providing services during a ten-month school year who is paid over 12 months), an election to annualize the compensation must be made before services begin. The election may be adopted unilaterally by the ESC. *26 C.F.R. 1.409A-2(a)(14), (c)*

Except as otherwise provided at 26 U.S.C. 409A, the election shall provide that annualized compensation may not be distributed earlier than the date of separation from service or at a specified time (or pursuant to a fixed schedule). *26 U.S.C. 409A(2)*

An employee "separates from service" with an ESC if the employee dies, retires, or otherwise has a termination of employment with the ESC. The employment relationship is treated as continuing intact while the individual is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months, or if longer, so long as the individual retains a right to reemployment with the ESC under statute or by contract. *26 C.F.R. 1.409A-1(h)*

**Notice Regarding
Earned Income Tax
Credit**

Not later than March 1 of each year, an ESC shall provide employees with information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;
2. Electronically to the employee's last known e-mail address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or
4. By first class mail to the employee's last known address.

An ESC may not satisfy this requirement solely by posting information in the workplace.

In addition, an ESC may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

Labor Code 104.001-.003