

COMPENSATION AND BENEFITS
SALARIES AND WAGES

DEA
(LEGAL)

Fair Labor Standards Act

Minimum Wage and Overtime

Unless an exemption applies, each employer, including each college district, shall pay each of its employees not less than minimum wage for all hours worked. *29 U.S.C. 206(a)*

Unless an exemption applies, an employer 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, in accordance with 29 C.F.R. Part 778. *29 U.S.C. 207(a)(1); 29 C.F.R. 778*

Law Enforcement Officers

No public agency shall be deemed to have violated 29 U.S.C. 207(a) with respect to the employment of any employee in law enforcement activities if:

1. In a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 171 hours compensation at a rate not less than one and one-half times the regular rate at which he is employed; or
2. In the case of such an employee to whom a work period of at least seven but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 171 hours bears to 28 days, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. 207(k); 29 C.F.R. 553.230(b)-(c)

Breaks for Nonexempt Employees

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.

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 the employee's 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. [See DG(LEGAL) for provisions requiring breaks for nursing mothers]

29 C.F.R. 785.18-19

Compensatory Time
Accrual

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 agree-

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ment 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.

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.

29 U.S.C. 207(o)(1)-(2), (3)(A); 29 C.F.R. 553.23(c)(1); Christensen v. Harris County, 529 U.S. 576 (2000)

*Payment for
Accrued Time*

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). *29 U.S.C. 207(o)(3)(B), (4)*

Use

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 employer.

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

29 U.S.C. 207(o)(5); 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

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. *29 U.S.C. 213(a)(1)*

*Administrative
Employee*

The term "employee employed in a bona fide administrative capacity" shall mean any employee:

1. Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities;
2. Whose primary duty is 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

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3. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

29 C.F.R. 541.200(a)

Academic
Administrator

The term “employee employed in a bona fide administrative capacity” also includes an employee:

1. Who is compensated for services on a salary or fee basis at a rate of not less than \$684 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the educational establishment by which employed; and
2. Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

“Performing administrative functions directly related to academic instruction or training” means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

Employees engaged in academic administrative functions include:

1. Department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, and the like;
2. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and
3. Other employees with similar responsibilities.

Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

29 C.F.R. 541.204

*Professional
Employee*

An “employee employed in a bona fide professional capacity” shall mean any employee:

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1. Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and
2. Whose primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

29 C.F.R. 541.300(a)

Faculty

The term “employee employed in a bona fide professional capacity” also means any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term “educational establishment” means an institution of higher education or other educational institution. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools’ responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher’s certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

29 C.F.R. 541.204(b), .303

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Other
Professionals

The professional employee exemption also applies to learned professionals, as described by 29 C.F.R. 541.301; creative professionals, as described by 29 C.F.R. 541.302; and employees engaged in the practice of law or medicine, as described by 29 C.F.R. 541.304.

*Computer
Employees*

Computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field are eligible for exemption as professionals. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.

The exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging or other facilities and to any computer employee compensated on an hourly basis at a rate not less than \$27.63 an hour. In addition, the exemption applies only to computer employees whose primary duty consists of:

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;
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.

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties that qualify the employees for exemption under 29 C.F.R. Part 541, Subpart B or Subpart C. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific, or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion, or other change of status of the other programmers are

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given particular weight, generally meets the duties requirements for the executive exemption.

29 C.F.R. 541.400, .402

Salary Basis

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis as described in 29 C.F.R. 541.600, unless the employee is a teacher or the employee holds a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof. Subject to the exceptions listed in 29 C.F.R. 541.602, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. An employer that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay exempt employees on a salary basis. *29 C.F.R. 541.600, .602(a), .603*

Highly
Compensated
Employees

An employee with total annual compensation, as described by 29 C.F.R. 541.601, of at least \$107,432 is deemed exempt if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in 29 C.F.R. Part 541, Subparts B, C, or D. *29 C.F.R. 541.601*

Partial-Day
Deductions

An employee of a public agency who otherwise meets the salary basis requirements shall not be disqualified from exemption on the basis that the employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and that requires the employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay.

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the work-week in which the furlough occurs and for which the employee's pay is accordingly reduced.

29 C.F.R. 541.710

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<i>Safe Harbor Policy</i>	<p>If an employer 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 employer will not lose the deduction unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.</p> <p>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 employer's intranet.</p> <p><i>29 C.F.R. 541.603(d)</i></p>
Wage and Hour Records	<p>Every employer shall maintain and preserve payroll or other records for nonexempt employees containing the information required by 29 C.F.R. 516.2. <i>29 C.F.R. 516.2(a)</i></p>
Employee with Multiple Appointments	<p>A full-time employee of an institution of higher education, including a college district, who has appointments to more than one position at the same institution may receive pay for working more than 40 hours in a week if the institution determines that pay in lieu of compensatory time is in the best interests of the institution. <i>Education Code 51.963</i></p>
Pay Increases Generally	<p>A college district 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></p>
Merit Salary Increases	<p>An institution of higher education, including a college district, may grant merit salary increases, including one-time merit payments, to employees described by this section. A merit salary increase made under Education Code 51.962 is compensation for purposes of Government Code Chapter 659, and salary and wages and member compensation for purposes of Government Code Title 8. An institution of higher education may pay a merit salary increase from any funds. Before awarding a merit salary increase, an institution of higher education must adopt criteria for the granting of merit salary increases. To be eligible for a merit salary increase, an employee must have been employed by the institution of higher education for the six months immediately preceding the effective date of the increase and at least six months must have elapsed since the employee's last merit salary increase.</p>

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For employees employed by the institution of higher education for more than six months, the requirement that six months elapse between merit salary increases does not apply to a one-time merit payment if the chief administrative officer of the institution of higher education determines in writing that the one-time merit payment is made in relation to the employee's performance during a natural disaster or other extraordinary circumstance.

Education Code 51.962

Salary Advances
and Loans

A political subdivision, including a college district, shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)*

**Payments in Excess
of Contractual
Amount**

A political subdivision, including a college district, may not pay an employee or former employee more than an amount owed under a contract with the employee unless the political subdivision holds at least one public hearing under this section.

Notice must be given of the hearing in accordance with notice of a public meeting under Government Code Chapter 551, Subchapter C.

The governing body of the political subdivision must state the following at the public hearing:

1. The reason the payment in excess of the contractual amount is being offered to the employee or former employee, including the public purpose that will be served by making the excess payment; and
2. The exact amount of the excess payment, the source of the payment, and the terms for the distribution of the payment that effect and maintain the public purpose to be served by making the excess payment.

Local Gov't Code 180.007

**Notice Regarding
Earned Income Tax
Credit**

Not later than March 1 of each year, each employer, including every college district, shall provide to the employer's employees information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;
2. Electronically at the employee's last known email address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or

4. By mailing the information to the employee at the employee's last known address by U.S. first class mail.

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

In addition, an employer 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

**Payday Law
Exemption**

The Texas Payday Law does not apply to the state or a political subdivision. *Labor Code 61.003*

**Gifts, Grants, and
Donations for Salary
Supplements**

Conflict of Interest
Provisions

A state agency, including a college district, by rule shall adopt conflict of interest provisions regarding the acceptance by the agency of a gift, grant, donation, or other consideration to be used as a salary supplement for an employee of the agency. The governing board of an institution of higher education shall adopt the conflict of interest provisions in the same manner as the board adopts other policies applicable to the institution. The agency shall post the conflict of interest provisions on the agency's internet website. *Gov't Code 659.0201(c)*

Internet Posting

A state agency that accepts a gift, grant, donation, or other consideration from a person that the person designates to be used as a salary supplement for an employee of the agency shall post on the agency's internet website the amount of each gift, grant, donation, or other consideration provided by the person that is designated to be used as a salary supplement for an employee of the agency. The agency may not post the name of the person. *Gov't Code 659.0201(b)*

Reports

The state auditor shall adopt a schedule and format for reporting information required by this section that does not require the release of information that identifies an anonymous donor. *Gov't Code 659.0201(h)*

Generally

Each state agency receiving a gift, grant, donation, or other consideration from a person that is designated to be used as a salary supplement for a named person, position, or endowment shall report the following information to the state auditor in the form determined by the state auditor:

1. Whether the person making the gift, grant, or donation or providing other consideration to the state agency is an individual or an entity;
2. If the person is an entity, the type of entity;

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3. If the entity is a nonprofit entity or organization, whether the entity is classified as a supporting organization by the Internal Revenue Service;
4. If the entity is classified as a supporting organization by the Internal Revenue Service, the type of supporting organization, the name of the supported organization, and any other information relating to that classification;
5. Any internal or external oversight procedures the state agency has established to monitor the use of any gift, grant, donation, or other consideration the agency receives; and
6. How the state agency uses gifts, grants, donations, and other consideration the agency receives, including whether they are used to provide salary supplements for agency employees.

Gov't Code 659.0201(i)

*College District
Support Entities*

If the person making a gift, grant, or donation or providing other consideration to the state agency for the purpose of a salary supplement is an entity created solely to provide support for the state agency, the entity shall report to the agency:

1. The name of each person who makes gifts, grants, or donations, or provides other consideration to the entity, in an amount or having a value that exceeds \$10,000, unless the person has made a request to the entity to remain anonymous; and
2. The amount or value of each specific gift, grant, donation, or other consideration.

A state agency that receives the gift, grant, donation, or other consideration shall compile the information the agency receives into a report and submit the report to the state auditor and the legislature. The state auditor may review the report to identify any conflicts of interest or any other areas of risk. The state auditor shall report the results of the audit to the legislature.

The information provided to the institution of higher education is confidential and is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

Gov't Code 659.0201(d)–(g)