

# BOARD OF REGENTS BRIEFING PAPER

**1. AGENDA ITEM TITLE:** Proposed Amendments to Title 4, Chapter 3, and Procedures and Guidelines Manual, Chapter 19 Regarding Overtime Eligible Administrative Faculty and Temporary Hourly Employees.

**MEETING DATE:** October 21, 2016

## **2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

Regulation changes to the federal Fair Labor Standards Act (FLSA) become effective December 1, 2016. These changes necessitate NSHE policy changes as certain administrative faculty at every NSHE institution will become overtime eligible on December 1.

## **3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

Approval of the following policy changes:

- Title 4, Chapter 3, add a new Section 52 to indicate that administrative faculty who are considered non-exempt (*e.g.* entitled to earn overtime) under the Fair Labor Standards Office are governed by the procedures in the Procedure and Guidelines Manual, Chapter 19.
- Procedures and Guidelines Manual, Chapter 19, renamed from “Temporary Hourly” to “Temporary Hourly and Overtime Eligible Administrative Faculty.”
- Procedures and Guidelines Manual, Chapter 19, add a new Section 5 to set forth guidelines governing the earning of overtime by administrative faculty.
- Procedures and Guidelines Manual (PGM), Chapter 19, Section 2.1.b, amended to limit the earning of overtime by temporary hourly employees to time worked in excess of 40 hours in a week to be consistent with the new PGM guidelines applicable to overtime eligible administrative faculty.

## **4. IMPETUS (WHY NOW?)**

FLSA regulations are effective December 1, 2016.

## **5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- Under current federal law, salaried employees who earn less than \$23,660 are entitled to overtime pay.
- As of December 1, 2016, salaried employees who earn less than \$47,476 will be entitled to overtime pay.
- The institutions and units have salaried employees (“administrative faculty”) who earn \$23,660 or more and less than \$47,476 and who, therefore, will be entitled to earn overtime pay as of Dec. 1, 2016. Administrative faculty, who are entitled to earn overtime, are referred to as “non-exempt administrative faculty.”
- Institutions and units cannot afford to raise all non-exempt administrative faculty to the federal minimum of \$47,476 or above.
- Policies governing overtime eligible administrative faculty are necessary to be in compliance with the new FLSA regulations.
- As set forth above, to address these requirements, new language is added to Title 4, Chapter 3, a new Section 52, Overtime Eligible Administrative Faculty, and to the Procedures and Guidelines Manual, Chapter 19, a new Section 5, Overtime Eligible Administrative Faculty.
- The proposed amendments were drafted by the NSHE Human Resources Advisory Council, which has representation from all institutions.

*Form Revised: 09/21/16*

- Overtime eligible administrative faculty will be entitled to overtime payments for a time worked in excess of 40 hours in one week.
- With the agreement of the non-exempt administrative faculty member, compensatory time may be earned in lieu of cash overtime payments.
- System wide policies are necessary to ensure consistency.
- To be consistent with the new PGM guidelines for non-exempt administrative faculty, existing language in the PGM, in Chapter 19, Section 2.1.b is amended to limit the earning of overtime by temporary hourly employees to time worked above 40 hours in a week.

**6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

- Each institution should implement its own policies to govern overtime eligible Administrative Faculty.
- Administrative Faculty should all be exempt from overtime rules.

**7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

- Raise all Administrative Faculty to the federal minimum of \$47,476 or above.

**8. COMPLIANCE WITH BOARD POLICY:** This action will create new policies addressing over time eligible Administrative Faculty.

- Consistent With Current Board Policy: Title # \_\_\_\_\_ Chapter # \_\_\_\_\_ Section # \_\_\_\_\_
- Amends Current Board Policy: Title # 4 Chapter # 3 Section # new Section 52
- Amends Current Procedures & Guidelines Manual: Chapter # 19, #Section 2.1.b and adds a new Section # 5
- Other: \_\_\_\_\_
- Fiscal Impact: Yes \_\_\_\_\_ No x  
Explain:  
\_\_\_\_\_

**POLICY PROPOSAL**  
**TITLE 4, CHAPTER 3, NEW SECTION 52**  
***Overtime Eligible Administrative Faculty***

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Title 4, Chapter 3 PROFESSIONAL STAFF

...

*Section 52*                      *Overtime Eligible Administrative Faculty*

*Administrative Faculty positions which are considered non-exempt under the Fair Labor Standards Act are governed by the provisions contained in the Procedures and Guidelines Manual, Chapter 19, Section 5.*

**PROCEDURES AND GUIDELINES MANUAL**

**AMENDS CHAPTER 19 TO CHANGE CHAPTER TITLE, AMENDS SECTION 2.1.B AND  
ADDS A NEW SECTION 5,**

***Regarding Overtime Eligible Administrative Faculty and Temporary Hourly  
Employees***

Additions appear in ***boldface italics***; deletions are [~~stricken~~ and bracketed]

**SYSTEM OF HIGHER EDUCATION  
PROCEDURES AND GUIDELINES MANUAL  
CHAPTER 19**

**TEMPORARY HOURLY APPOINTMENTS AND OVERTIME ELIGIBLE ADMINISTRATIVE  
FACULTY**

...  
**Section 2. Temporary Hourly Employment**

1. Compensation

- a. Hourly wage: The hourly wage must adhere to the pay schedule and titles provided.
  - b. Overtime: Overtime is earned at a rate 1.5 times the hourly wage for time worked [~~over 8 hours per day OR~~] 40 hours per work week[~~with a modified overtime agreement~~].  
Overtime must be requested and approved in advance and should be incurred sparingly.
  - c. Holidays: Ineligible for paid holidays or additional pay for time worked on holidays.
  - d. Payroll: Semi-monthly.
- ...

**Section 5. Overtime Eligible Administrative Faculty**

1. ***Fair Labor Standards Act and Definition of Work***

- a. ***Overtime Eligible Administrative Faculty hold positions that do not meet the minimum salary threshold and/or the duties tests as required under the Fair Labor Standards Act in order to be classified as exempt.***
- b. ***Employees must receive pay for all time during which an employee is required to be on the employer's premises or performing work activities. All time controlled or required by the supervisor and pursued necessarily and primarily for the benefit of the employer must be counted as work time. When an employee is required, either by law or rules of the employer, or as an integral part of the performance of the individual's work, to wash up and/or change clothing on the institution's premises before or after working, the time spent changing and/or washing is work time. Attendance at lectures, meetings, training programs and similar activities need not be counted as hours worked if all of the following four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed. All time worked without authorization must also be counted as work time.***
- c. ***Work activities include, but are not limited to, performing the principle assignment, paid breaks, on-call, donning and doffing equipment, required***

*trainings, work required travel (other than home to work travel), telephone conversations, responding to e-mail, texting for work purposes, etc.*

**2. Overtime**

- a. Employees are eligible for overtime compensation when the employee works an excess of 40 hours in a workweek. Overtime must be approved by the employee's supervisor in advance.*
- b. Employees who work overtime without authorization are subject to disciplinary action.*
- c. The "workweek" is a calendar week, running from 12:01 a.m. Sunday to 12:00 p.m. Saturday.*
- d. Annual leave, sick leave, use of compensatory time and paid holidays are not counted toward time worked for overtime calculation purposes.*
- e. Departments are encouraged to use flexible schedules to limit overtime costs and demands upon employees.*
- f. In order to ensure a proper work and personal life balance and to protect employees from excessive work schedules and to limit an employer's cost liabilities, overtime must be kept to a minimum.*

**3. On-Call Work**

- a. On-Call – When employees are required to restrict their whereabouts and activities in order to be available for return to work to meet emergencies, they shall receive “on-call” compensation at the rate of 5% of their regular hourly rate for every hour they are on-call. Employees are considered on-call if they are directed to remain available for notification to work during specified hours that are outside their customary work schedule and if they must be able to report to work within a reasonable time specified by the department to perform on-call duty. Use of cellular phones, beepers, pagers, or other means of remaining available for contact, which do not require any restriction on an employee's whereabouts or activities, are not compensable as “on-call” time.*
- b. Time spent engaging in work when responding to a “call” is considered time worked and as appropriate should be included for overtime calculation purposes.*

**4. Accrual and Use of Annual Leave, Sick Leave and Compensatory Time**

- a. Annual and sick leave is earned and taken on an hourly basis (not full-day and half-day increments). For employees, annual and sick leave is accrued at the rate of 16 hours per month (pro-rated by Full Time Equivalent for part-time employees).*
- b. Employees are eligible to earn compensatory time at a rate of time and one-half in lieu of cash payment for overtime worked.*
  - i. Compensatory time off must be requested and approved in advance by the faculty member. A supervisor may direct a faculty member to use accrued compensatory time.*
  - ii. Compensatory time off shall be used within six months of the date earned (unless otherwise approved by the supervisor) and must be exhausted prior to annual leave unless annual leave forfeiture exists at the end of the fiscal year.*
  - iii. While on FMLA leave, if annual, sick and compensatory time is available, the order of use of leave is sick, compensatory, and then annual.*
  - iv. Employees may not carry a balance of more than 120 hours of compensatory time at any time, including between fiscal years.*
  - v. Managers may choose to pay cash in lieu of compensatory time.*
  - vi. Employees may request cash payment in lieu of compensatory time.*

**5. Time Tracking**

- 1. Employees must establish a record showing their schedule of daily and weekly hours or input their time worked in a time tracking system**
- 2. The schedule is in effect until a new schedule is established.**
- 3. It is assumed the stated schedule is followed each week, unless overtime is requested in advance by the employee and approved by the supervisor.**
- 4. The record of the employee's schedule should be maintained (electronically or on paper) in the department's personnel files.**
- 5. Any annual or sick leave taken must be recorded, through a leave request, as an exception to the regular schedule.**
- 6. Employees must request a compensatory time credit via the method established by the institution.**

**6. Travel Time**

- 1. Employees who are otherwise entitled to pay for overtime may earn overtime for traveling if the actual work time and travel time exceed 40 hours in a workweek.**
- 2. Travel time begins when the employee leaves their workstation, or home if authorized, and continues until the employee reaches the geographical location for the work assignment.**

**7. Breaks and Meal Periods**

- 1. Meal Period: An unpaid meal break of at least 30 minutes must be taken for any shift that exceeds six hours. The meal break should be taken in the middle of the work shift.**
- 2. Rest Periods: A 15 minute paid rest period must be provided for each four hour period of work, to be taken in the middle of the four hour work period.**
- 3. An employee must be relieved of all work activities during meal and rest periods.**