

**Texas Military Department Regulation 1461-01**

**Personnel General**

**Premium Pay for  
Texas Military  
Department  
Employees**

**Office of the Adjutant General,  
Texas Military Department,  
Joint Force Headquarters,  
Austin, Texas 78763-5218  
19 December 2018**

**UNCLASSIFIED**

Office of the Adjutant General  
Texas Military Department  
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Post Office Box 5218  
Austin, Texas 78763-5218  
19 December 2018

Texas Military Department  
(TMD) Regulation 1461-01

Information Management

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## **PREMIUM PAY FOR TEXAS MILITARY DEPARTMENT EMPLOYEES**

By Order of the Adjutant General:

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**Summary.** This regulation establishes control and use of overtime and compensatory time within the Texas Military Department (TMD).

**Applicability.** This regulation applies to all federal Title 5, National Guard employees and Title 32 military technicians of TMD.

**Management Control Process.** This regulation contains internal control provisions but does not contain a checklist for conducting internal control reviews.

**Proponent and Exception Authority.** The proponent of this publication distribution regulation is the Human Resources Office (HRO). Within the publication on the following pages, the proponent, means the drafter of the publication to be distributed.

**Supplementation.** Supplementation of this publication and establishment of command and local forms is prohibited without prior approval from the Human Resources Office, ATTN: NGTX-JHR, P.O. Box 5218, Austin, TX 78763-5218.

**Suggested Improvements.** Users are invited to send comments and suggested improvements concerning this regulation on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Human Resources Office ATTN:NGTX- JHR, P.O. Box 5218, Austin, TX 78763-5218.

**Distribution. A**

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## **Chapter 1 Introduction**

### **1-1. Purpose**

To define and outline the entitlement of premium pay as governed by 5 Code of Federal Regulations (5 CFR), section 550.172 for Title 5 National Guard Employees (T5 NGE) and Title 32 military technicians (T32 MILTECH).

### **1-2. References**

See appendix D.

### **1-3. Explanation of Abbreviations and Terms**

See glossary, appendix C.

### **1-4. Responsibilities**

The Human Resources Office (HRO) is the functional proponent and manager of this regulation.

## **Chapter 2 Policy**

### **2-1. Types of Premium Pay**

a. *Overtime pay*: Overtime pay is provided under 5 U.S.C. for hours of work officially ordered or approved in excess of applicable overtime standards (generally eight hours in a day or 40 hours in an administrative workweek). Applicable only to non-exempt T5 NGE.

b. *Compensatory time off*: Compensatory time off is time off with pay in lieu of overtime pay for irregular/occasional overtime work. Applicable to all employees.

c. *Night pay*: Night pay is a ten percent (10%) differential paid to an employee for regularly scheduled work generally performed between the hours of 6 p.m. and 6 a.m., except when an approved flexible work schedule allows for work between those hours as a part of the regular duty day. Applicable to T5 NGE and T32 MILTECH general schedule (GS) employees.

d. *Night differential pay*: Night differential pay or night shift differential pay is the differential paid for work performed when the majority of a prevailing rate employee's regularly scheduled non-overtime hours fall between 3 p.m. and 8 a.m. Applicable to T32 MILTECH federal wage system (FWS) employees.

e. *Sunday premium pay*: Sunday premium pay is equal to 25 percent of the employee's rate of basic pay for each hour of Sunday work. For this purpose, Sunday work consists of non-overtime work during an employee's regularly scheduled basic tour of duty (not to exceed 8

hours) that begins or ends on a Sunday. Notwithstanding the normal eight hour limit, for an employee on a compressed work schedule, all non-overtime hours in the employee's regularly scheduled daily tour of duty beginning or ending on a Sunday constitutes Sunday work. Applicable to all employees.

f. *Holiday premium pay:* For each hour of holiday work, employees receive holiday premium pay. Holiday premium pay is equal to an employee's rate of basic pay. Employees who are required to work on a holiday during their tour of duty receive their rate of basic pay, plus holiday premium pay, for each hour of holiday pay worked. This is applicable to all employees.

g. *Standby duty pay:* The Adjutant General (TAG) may approve standby duty pay for an employee in a position requiring the employee to remain at, or within the confines of, his or her duty station during longer than ordinary periods of duty. Standby duty pay applies in lieu of overtime pay for regularly scheduled overtime hours, Sunday pay for Sunday work within the basic workweek, holiday premium pay for holiday work, and night pay for night work. Standby duty pay recipients may receive standard overtime pay for any irregular overtime hours. Standby duty pay may not exceed twenty-five percent (25%) of an employee's rate of basic pay. Applicable to all employees.

## **2-2. Overtime pay.**

Overtime must be monitored to ensure overtime compensation remains within the budgetary ceilings established by Texas Army National Guard (TXARNG) and Texas Air National Guard (TXANG). Applicable only to non-exempt T5 NGE. Use the following process to facilitate overtime pay:

- a. Texas Army National Guard overtime requests require HRO approval and must be submitted to the HRO as soon as the need to perform overtime is identified. Requests must be submitted on an NGB Form 46-14 (Appendix A) and a justification memorandum (Appendix B) detailing the need for overtime must accompany it. Overtime will not be permitted until after approval has been granted by the HRO or their designated representative.
- b. Texas Air National Guard overtime requests require approval by the Wing Commander for verification of funds as soon as the need to perform overtime is identified. Requests must be submitted on an NGB Form 46-14 (Appendix A) and a justification memorandum (Appendix B) detailing the need for overtime must accompany it. Overtime will not be permitted until after coordination and verification has been made by the Wing Commander or their designated representative.
- c. Fair Labor Standards Act (FLSA) exempt employees, as defined in 5 U.S.C. 5541(2), who work full-time, part-time, or intermittent tours of duty are eligible for T5 NGE compensatory time off only.

### 2-3. Fair Labor Standards Act (FLSA).

The FLSA is a federal law, which establishes minimum wage, overtime pay eligibility, recordkeeping, and child labor standards affecting full-time and part –time workers in the private sector and in federal, state and local government. As defined in appendix D, Department of Labor (DOL), “Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees” and 5 CFR section 551, employees are considered either “exempt” or “nonexempt” from earning overtime under FLSA rules. Job titles do not determine exemption status.

- a. *Nonexempt.* Nonexempt, T5 NGE are entitled to overtime pay. Supervisors cannot request that a nonexempt T5 NGE earn compensatory time in lieu of overtime; however, the nonexempt T5 NGE may request compensatory time instead of overtime.
- b. *Exempt.* Exempt T5 NGE are not entitled to overtime pay under the FLSA but are entitled to compensatory time.
- c. T32 MILTECH, regardless of their FLSA category, are not entitled to overtime pay but are entitled to compensatory time.
- d. Position exempt or nonexempt may be found in block 35, of current Standard Form 50 (SF50), Notification of Personnel Action.

POSITION DATA				
34. Position Occupied 1 - Competitive Service 2 - Excepted Service	3 - SES General 4 - SES Career	35. FLSA Category E - Exempt N - Nonexempt	36. Appropriation Code	37. Bargaining Unit Status
38. Duty Station Code		39. Duty Station (City - Country - State or Overseas Location)		
40. AGENCY DATA	41.	42.	43.	44.

### 2-4. Scheduling and Working Compensatory/Overtime.

Employees must have the approval of their supervisor *before* working compensatory time. Supervisors will reference local collective bargaining agreements (CBA) prior to adjusting an employee work schedule. Supervisors are responsible for assuring that sufficient numbers and types of personnel are scheduled to be present to carry out operations in an efficient and economical manner. The approving official, or designee, may determine the numbers and types of employees on duty during the core hours of any given day as well as assuring essential services are provided outside core hours.

- a. Requesting compensatory/overtime time.

(1) Compensatory time. Requests are made on NGB Form 46-14, Request, Authorization and Report of Compensatory Time, and are signed by the requestor (immediate supervisor or

someone within the chain of command) prior to performance of any compensatory time. Once compensatory time is performed, the employee signs indicating the time and hours actually worked.

(2) Supervisors must grant or deny the requests to use compensatory time as soon as possible after considering work practices based on the facts and circumstances in each case. Such practices include but are not limited to, the normal schedule of work, anticipated peak workloads based on past experience, emergency requirements for staff and services, and the availability of qualified substitute staff.

(3) All employees must use compensatory time by the end of the twenty-sixth (26) pay period from when it was earned. All employees must use compensatory time prior to the use of annual leave unless the employee has use or lose annual leave.

b. Separation and Absent-Uniformed Services (ABSENT-US) status.

(1) All T5 NGE unable to use their compensatory time off because of separation or placement in a leave without pay status must be paid for compensatory time off at the overtime rate in effect when earned under 5 U.S.C. chapter 81. Reasons to pay for compensatory time off while in a leave without pay status include performing service in the uniformed service, an on-the-job injury with entitlement to injury compensation under 5 U.S.C. Chapter 81.

(2) All T32 MILTECH unable to use their compensatory time off by the end of the 26<sup>th</sup> pay period after the pay period for which it is earned, must forfeit the unused time.

(3) T5 NGE and T32 MILTECH entering military furlough (ABSENT-US) may adjust their start date utilizing regular compensatory time and time off awards.

c. Training and Traveling. See Appendix A for examples.

(1) For all T5 NGE and T32 MILTECH, time spent traveling away from the official duty station is also hours of employment if the time spent is within the days and hours of an employee's regularly scheduled administrative workweek. Premium pay does not apply to travel time on a Sunday or a holiday. The Comptroller General has ruled that travel time during a Sunday or holiday (whether driving or riding) is not work time, and therefore, does not fall within an employee's regularly scheduled administrative workweek. In this circumstance, compensatory time for travel will be authorized.

(2) For the purpose of compensatory time off for travel, time in a travel status includes:

(a) Time spent traveling between the official duty station and a temporary duty station.

(b) Time spent traveling between two temporary duty stations.

(c) The “usual waiting time” preceding or interrupting such travel (e.g., waiting at an airport prior to departure). For the purpose of “usual waiting time” anything exceeding three (3) hours will not be considered time in a travel status as the employee is free to rest, sleep, or otherwise use the time for his or her own purposes.

(3) Non-exempt T5 NGE, when traveling in a compensatory status, may not participate in work as doing so would negate the earning of compensatory time and the employee would then be entitled to overtime. Changes to employees normal regularly scheduled basic work week solely to include travel hours so that work may be permitted is not authorized. Time spent traveling is hours of work if:

(a) An employee is required to travel during their regular working hours.

(b) An employee is required to work during travel (e.g. by being required to drive a government vehicle as a part of a work assignment).

(c) An employee is required to travel as a passenger on a one day assignment away from the official duty station.

(d) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee’s regular working hours.

(4) Commuting time definition/deduction: Normal commuting time from home to work and from work to home are not considered hours of work. For an employee assigned to a temporary duty station overnight, normal “home-to-work/work-to-home” commuting also includes travel between the employee’s temporary place of lodging and a work site within the limits of the temporary duty station. If an employee (T5 NGE or T32 MILTECH) is required to travel directly between home and a temporary duty location outside the limits of the employee’s official duty station, the time the employee would have spent in normal commuting must be deducted when calculating hours of work in excess of the employees regularly scheduled administrative workweek.

(5) Training. Except for limited situations, prohibits payment of any form of premium pay (holiday/night/Sunday differential, standby authorized unscheduled overtime, compensatory and overtime) for time spent in training.

### **Chapter 3**

#### **Training and Work Schedules**

Employees who work a condensed/flexible schedule should adjust their schedules to meet that of their training course. Employees should not accrue compensatory time or overtime while attending a training event simply because their work schedule is condensed/flexible. For example, an employee who usually works 4/10’s and is attending a training event that is five

days long would adjust their schedule to five days. Alternately, an employee who usually works from 0630 to 1530 five days a week would adjust their hours so that they were not obtaining compensatory/overtime time for a training event from 0800 to 1630.

# Appendix A

REQUEST, AUTHORIZATION, AND REPORT OF COMPENSATORY TIME, TRAVEL COMPENSATORY TIME, HOLIDAY PREMIUM AND OVERTIME							
The proponent agency is NGB-ARC-F. The prescribing directive is NGR (AR) 37-105							
PRIVACY ACT STATEMENT							
<small>AUTHORITY: Executive Order 9397; 5 USC Section 6311; and 31 USC Section 7701.            PURPOSE: A standardized management record of request, authorization, and reporting of compensatory time, travel compensatory time, holiday premium and overtime earned for National Guard (NG) Title 32 Dual Status and Title 5 Civilians. Used as the substantiating document for entering of compensatory time holiday premium and overtime earned in the civilian pay system.            ROUTINE USES: None.            DISCLOSURE: Voluntary; However, failure to furnish requested information may result in delayed, impeded, or erroneous posting of compensatory time / overtime earned.</small>							
EMPLOYEE NAME (Last, First, MI)					EMPLOYEE DoD ID NUMBER		CIVILIAN GRADE
FROM (Office Symbol)		THRU (If Applicable)		TO (Approving Official)		UIC / ORGANIZATION CODE	PAY PERIOD ENDING (PPE)
DATE REQUESTED	TYPE HOUR CODE	HOURS REQUESTED	DATE WORKED	HOURS FROM:	HOURS TO:	TOTAL HOURS WORKED	EMPLOYEE SIGNATURE
<b>TOTAL HOURS REQUESTED</b>		0	<b>TOTAL HOURS WORKED</b>			0	
NATURE OF DUTIES AND JUSTIFICATION WHY WORK CANNOT BE ACCOMPLISHED DURING NORMAL DUTY HOURS							
DATE OF REQUEST			NAME, GRADE, AND TITLE OF REQUESTER (Supervisor, Section chief, Manager or Director)			SIGNATURE OF REQUESTER	
DATE OF APPROVAL <input type="checkbox"/> DISAPPROVAL <input type="checkbox"/> (Check)			NAME, GRADE, AND TITLE OF APPROVING OFFICIAL			SIGNATURE OF APPROVING OFFICIAL	

**Appendix B**

Office Symbol

Date

MEMORANDUM FOR ALL TMD T5, NGE AND REQUESTING COMPENSATORY TIME IN LIEU OF OVERTIME

SUBJECT: Compensatory Time Off in Lieu of Overtime Pay

1. Texas Military Department employees that are (1) FLSA Exempt with a rate of pay of GS-10 Step 10 or lower and (2) FLSA Non-exempt employees may request to receive compensatory time off in lieu of overtime pay. Compensatory time off may be approved (not required) in lieu of regularly scheduled overtime work only for employees, including wage employees, who are ordered to work overtime hours under flexible work schedules.
2. By signing this memorandum, the member acknowledges that they are requesting compensatory time off in lieu of overtime pay in order to meet approved mission requirements. Overtime pay will only be approved by HRO in rare cases where there would be an extremely negative impact to the mission if overtime pay were not approved.
3. It is the responsibility of the technician supervisor to keep this form for a period of two years to serve as official documentation for the aforementioned compensatory time off selection in lieu of overtime pay.
4. Questions regarding this guidance may be directed to Director, Human Resource Office at 512-782-6725.

_____	_____
Member Signature	Date
_____	_____
Supervisor Signature	Date

## Appendix C Glossary

**Accountability/recordkeeping** – Timekeeping documents shall reflect actual hours worked by full-time, part-time, and intermittent employees. Failure to appropriately monitor compliance with the policies and procedures in this instruction, or failure to properly account for time and attendance may result in appropriate disciplinary and/or legal action.

**Accrued Leave** – The leave earned by an employee during the current leave year that is unused at any given time in that leave year.

**Accumulated Leave** – The unused leave remaining to the credit of an employee at the beginning of a leave year.

**Administrative workweek** – A period of seven consecutive calendar days, Sunday through Saturday.

**Basic workweek** – For full-time and part-time employees, this is defined as the days and hours within an administrative workweek which make up the employee's regularly scheduled workweek.

**Tour of duty** – The hours of a day (a daily tour of duty), and the days of a basic workweek (a weekly tour of duty), that are scheduled in advance during the administrative workweek during which an employee is required to perform duties on a regularly recurring basis.

**Fair Labor Standards Act (FLSA)** – The FLSA is a federal law which establishes minimum wage, overtime pay eligibility, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. Under the FLSA, employees are entitled to wages at or above the federal minimum wage and must be paid time and a half (“overtime”) for work after 40 hours in any administrative workweek.

**FLSA Exemption** – T32, MILTECH employees are not covered by the FLSA. For T5, NGE, their position is governed by the FLSA and are either “exempt” or “nonexempt”. Nonexempt employees are entitled to overtime pay under FLSA rules. Exempt employees are entitled to overtime under Title 5 rules. For additional information visit <http://www.wagehour.dol.gov>.

**Overtime work** – Overtime hours are hours of work that are ordered or approved (or are “suffered or permitted”) and are performed by an employee in excess of 8 hours in a day or 40 hours in a workweek.

**Overtime basis** – Under the Federal Employees Pay Act of 1945, overtime earnings, compensatory time, and premium pay are not to be used as the basis for requesting overtime.

**Compensatory time (regular)** – Defined as time off with pay in lieu of overtime pay for irregular or occasional overtime work. Compensatory time may not be accrued for overtime performed while in a training status, such as, service schools, Professional Education Center (PEC) courses, Office of Personnel Management Courses, etc.

**Compensatory time (travel)** – Defined as time off for time spent in a travel status away from the employee's official duty station. If the travel is performed outside of the member's regularly scheduled workweek and hours, it is normally compensated as compensatory time for travel. Certain conditions allow overtime pay for Title 5 employees.

**Compensatory time bi-weekly pay limitation** – The biweekly pay limitation in Title 5, United States Code (U.S.C.) 5547 is also a ceiling on compensatory time off. Compensatory time off is merely an alternative form of payment for overtime work. This is generally set at GS-15, Step 10 for the location and applies only to FLSA exempt employees.

**Reasonable notice** – Refer to the Contract Bargaining Agreement (CBA) for the definition. For non-bargaining unit employees, overtime requirements will be announced as far in advanced as possible to allow employees the opportunity to make suitable arrangements in order to perform the overtime work.

**Unforeseen Mission Critical Operations** – An activity, device, service or system whose failure or disruption will cause a failure in military operations.

**Exempt T5 NGE** – An employee who is a GS-10 or above and/or is a supervisor.

**Non-exempt T5 NGE** – An employee who is a GS-10 or below and/or is not a supervisor.

## Appendix D

### References:

[5 USC § 4109; Expenses of training](#)

[5 USC § 5542; Overtime rates; computation](#)

[5 USC § 5543; Compensatory time off](#)

[5 USC § 5550b; Compensatory time off for travel](#)

[5 USC § 6124; Flexible Schedules; Holidays](#)

[5 USC § 6121\(3\); Basic Work Requirement](#)

[29 USC Chapter 8; Fair Labor Standards](#)

[5 CFR § 532e; Overtime Pay](#)

[5 CFR § 532.509; Pay for Sunday Work](#)

[5 CFR § 550.112; Computation of overtime work](#)

[5 CFR § 550.171; Authorization of Pay for Sunday Work](#)

[5 CFR § 550.172; Relation to Overtime, Night, and Holiday Pay](#)

[5 CFR § 551; Pay Administration Under The Fair Labor Standards Act](#)

[5 CFR § 610.407; Premium Pay for Holiday Work for Employees on Compressed Work Schedules](#)

[29 CFR § 553.26; Cash overtime payments](#)

Office of Personnel Management; "Fact Sheet: Federal Holidays - Work Schedules and Pay," <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/holidays-work-schedules-and-pay>

Office of Personnel Management (OPM), "Fact Sheet: Compensatory Time Off", <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off/>

Office of Personnel Management (OPM), [Civilian Personnel Manual 2005-03, 27 January 2005, Compensatory Time Off for Travel.](#)

[Comptroller General Opinion B-160094, October 12, 1966](#), and the definition of "regularly scheduled administrative workweek" in [5 CFR 610.102](#).

Department of Labor (DOL), "Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees", <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm>

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