

596 OVERTIME

Education Code Sections

88026. The workweek of a classified employee, as defined in Section 88033 or Section 88076, shall be 40 hours. The workday shall be eight hours. These provisions do not restrict the extension of a regular workday or workweek on an overtime basis when such is necessary to carry on the business of the district. Nothing in this section shall be deemed to bar the district from establishing a workday of less than eight hours or a workweek of less than 40 hours for all or any of its classified positions.

Notwithstanding the provisions of this section and Section 88027, a governing board may, with the approval of the personnel commission, where applicable, exempt specific classes of positions from compensation for overtime in excess of eight hours in one day, provided that hours worked in excess of 40 in a calendar week shall be compensated on an overtime basis. Such exemption shall be applied only to those classes which the governing board and personnel commission, where applicable, specifically find to be subject to fluctuations in daily working hours not susceptible to administrative control, such as security patrol and recreation classes, but shall not include food-service and transportation classes.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

88027. The governing board of each community college district shall provide the extent to which, and establish the method by which ordered overtime is compensated. The board shall provide for such compensation or compensatory time off at a rate at least equal to time and one-half the regular rate of pay of the employee designated and authorized to perform the overtime.

Overtime is defined to include any time required to be worked in excess of eight hours in any one day and in excess of 40 hours in any calendar week. If a governing board establishes a workday of less than eight hours but seven hours or more and a workweek of less than 40 hours but 35 hours or more for all of its classified positions or for certain classes of classified positions, all time worked in excess of the established workday and workweek shall be deemed to be overtime. The foregoing provisions do not apply to classified positions for which a workday of fewer than seven hours and a workweek of fewer than 35 hours has been established, nor to positions for which a workday of eight hours and a workweek of 40 hours has been established, but in which positions employees are temporarily assigned to work fewer than eight hours per day or 40 hours per week when such reduction in hours is necessary to avoid layoffs for lack of work

or lack of funds and the consent of the majority of affected employees to such reduction in hours has been first obtained.

For the purpose of computing the number of hours worked, time during which an employee is excused from work because of holidays, sick leave, vacation, compensating time off, or other paid leave of absence shall be considered as time worked by the employee.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

88028. When compensatory time off is authorized in lieu of cash compensation, such compensatory time off shall be granted within 12 calendar months following the month in which the overtime was worked and without impairing the services rendered by the employing district.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060) of this chapter.

88029. Notwithstanding Sections 88026 and 88027, a personnel commission, when applicable, or a governing board of a community college district, may specify certain positions or classes of positions as supervisory, administrative, or executive and exclude the employees serving in those positions and the positions from the overtime provisions.

To be excluded from the overtime provisions, the positions or classes of positions must clearly and reasonably be management positions. In approving positions or classes of positions for exclusion from the overtime provisions, the personnel commission, when applicable, or the governing board of a district, shall certify, in writing, that the duties, flexibility of hours, salary, benefit structure, and authority of the positions or classes of positions are of such a nature that they should be set apart from those positions that are subject to the overtime provisions, and that employees serving in the excluded positions or classes of positions will not be unreasonably discriminated against as a result of the exclusion.

Notwithstanding the provisions of this section, if a person serving in an excluded position is required to work on a holiday, as provided for in this code, or by action of a governing board, he or she shall be paid, in addition to his or her regular pay for the holiday, compensation, or given compensating time off, at a rate not less than his or her normal rate of pay.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

88030. Notwithstanding Section 88026, the workweek shall consist of not more than five consecutive working days for any employee having an average workday of four hours or more during the workweek. Such an employee shall be compensated for any work required to be performed on the sixth or seventh day following the commencement of the workweek at a rate equal to 1 1/2 times the regular rate of pay of the employee designated and authorized to perform the work.

An employee having an average workday of less than four hours during a workweek shall, for any work required to be performed on the seventh day following the commencement of his or her workweek, be compensated for at a rate equal to 1 1/2 times the regular rate of pay of the employee designated and authorized to perform the work.

Positions and employees excluded from overtime compensation pursuant to Section 88029 shall likewise be excluded from this section.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

88040. (a) (1) Notwithstanding Section 88026, the governing board of a community college district may establish the workday and workweek schedules of classified employees with the concurrence of the employee organization, or in the absence of an employee organization, the concurrence of the affected employee.

(2) Notwithstanding Section 88027, if the governing board of a community college district establishes a workday or workweek schedule, or both, pursuant to this section, the overtime rate shall be paid for all hours worked in excess of the required workday or a workweek of 40 hours.

(b) This section applies to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

88076. (a) The commission shall classify all employees and positions within the jurisdiction of the governing board of the community college district or of the commission, except those that are exempt from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. "To classify" shall include, but not be limited to, allocating positions to

appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.

(b) The following positions and employees are exempt from the classified service:

- (1) Academic positions.
- (2) Full-time students employed part time.
- (3) Part-time students employed part time in a college work-study program or in a work experience education program conducted by a community college that is financed by state or federal funds.
- (4) Apprentice positions.
- (5) Positions established for the employment of professional experts on a temporary basis for a specific project by the governing board of a community college district or by the commission when so designated by the commission.

(c) Employment of either full-time or part-time students in a college work-study program or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(d) Nothing in this section shall prevent an employee, who has attained regular status in a full-time position, from taking a voluntary reduction in time and retaining his or her regular status under the provisions of this law.

(e) A person whose contribution consists solely in the rendition of individual personal services and whose employment does not come within the scope of the exceptions listed above shall not be employed outside the classified service.

(f) A part-time position is one for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is less than 87 1/2 percent of the normally assigned time of the majority of employees in the classified service.

(g) An employee employed by a community college district in a part-time playground position as of the effective date of the laws placing part-time playground positions into the classified service shall be deemed a permanent employee of the community college district without placement on an eligibility list under Section 88091 or examination under Section 88092.

Labor Code Sections

510. (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

- (1) An alternative workweek schedule adopted pursuant to Section 511.
- (2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.
- (3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

515. (a) The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, if the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. The commission shall conduct a review of the duties that meet the test of the exemption. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to duties that meet the test of the exemption without convening wage

boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(b) Except as otherwise provided in this section and in subdivision (g) of Section 511, nothing in this section requires the commission to alter an exemption from provisions regulating hours of work that was contained in valid wage order in effect in 1997. Except as otherwise provided in this division, the commission may review, retain, or eliminate an exemption from provisions regulating hours of work that was contained in valid wage order in effect in 1997.

(c) For the purposes of subdivision (a), "full-time employment" means employment in which an employee is employed for 40 hours per week.

(d) (1) For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary.

(2) Payment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee's regular, nonovertime hours, notwithstanding any private agreement to the contrary.

(e) For the purposes of this section, "primarily" means more than one-half of the employee's worktime.

(f) (1) In addition to the requirements of subdivision (a), a registered nurse employed to engage in the practice of nursing shall not be exempted from coverage under the orders of the Industrial Welfare Commission, unless-he or she individually meets the criteria for exemptions established for executive or administrative employees.

(2) This subdivision does not apply to any of the following:

(A) A certified nurse midwife who is primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(B) A certified nurse anesthetist who is primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(C) A certified nurse practitioner who is primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(D) Nothing in this paragraph shall exempt the occupations set forth in subparagraphs (A), (B), and (C) from meeting the requirements of subdivision (a).

- A. Employees appointed to a position in a class designated as Executive, Administrative, or Supervisory are exempt from the overtime payment provisions outlined in this rule except as provided in Paragraph F.5., below.
- B. Employees other than those identified in Paragraph A., above, are considered nonexempt and are eligible to earn overtime of up to 30 hours per week when required and authorized. This 30-hour time limitation does not apply to overtime caused by emergencies such as fire, flood, or danger to life and property. Overtime shall be defined as authorized time worked in excess of 40 hours in one workweek or in excess of the employee's established workday schedule as follows:
1. Hours worked in excess of eight hours per workday for employees assigned to a standard five-day, 40-hour workweek.
 2. Hours worked in excess of nine or eight hours per workday for employees assigned to a 9/80 work schedule, 80 hours within a two-workweek period.
 3. Hours worked in excess of ten hours per workday for employees assigned to a 4/10 work schedule.

No one shall require an employee to work overtime unless it is authorized and compensable. Such overtime shall be approved and reported according to procedures established by the District. Under no circumstances shall unauthorized overtime be compensable.

- C. Overtime shall be compensated as either cash payment or compensatory time off at a rate equal to one and one-half times the regular rate of pay of the employee who worked overtime. If compensatory time off is granted in lieu of cash payment, such compensatory time off shall be taken by the employee before the end of the fiscal year in which the overtime was worked. Accumulation of compensatory time off shall be limited to 240 hours per fiscal year. If an employee's balance equals or exceeds this amount, overtime must be in the form of cash payment. Any compensatory time off which has not been taken by the employee within the fiscal year in which the overtime was worked shall be compensated as a cash payment at the end of the same fiscal. Hours worked as overtime shall not be counted for vacation or seniority accrual purposes.

Except as indicated below, overtime shall be computed only on the basis of hours in paid status, exclusive of meal periods, in excess of the regular total hours of a full-time employee's established workday schedule or 40 hours in any workweek. Continuous service which extends beyond the hour of 12 midnight and meets these conditions shall be compensated as overtime. Time during which an employee

LAW AND RULES

is excused from work because of holidays, sick leave, vacation, compensating time off, or other paid leave of absence shall be considered time worked by the employee for the purpose of computing the number of hours worked. Less than 15 minutes overtime in any one day shall not be counted.

Notwithstanding the provisions above:

1. An employee who has been in paid status for an average of four hours or more a day for five days within a workweek shall receive overtime compensation for any work required to be performed on the sixth day of the workweek.
2. An employee who has been in paid status six days within a workweek shall receive overtime compensation for any work required on the seventh day of the workweek, regardless of the number of hours in paid status during the workweek.
3. For the purpose of the provisions in Paragraphs 1. and 2. above, workweek is defined as Monday through Sunday and sixth day is defined as the sixth day in paid status within such a workweek, regardless of whether it falls on Saturday or Sunday.
4. Employees who are given released time for purposes of career development will be required to work makeup time at the rate of one hour of makeup time for each two hours of released time. Time spent for makeup purposes which results in an employee being in paid status for a total of more than eight hours in any one day shall not be considered as authorized and compensable overtime for purposes of cash payment.

D. Assignments to the following classes by reason of their variable daily hours are excluded from the time and one-half provisions of this rule for hours worked in excess of eight hours in a workday, but are not excluded from overtime compensation for hours worked in excess of 40 hours per week.

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| Agricultural Assistant | Performing Arts Technician |
| Agricultural Technician | Senior Agricultural Technician |
| Art Gallery Preparator | Senior Examination Proctor |
| Athletic Trainer | Senior Sign Language Interpreter Specialist |
| Catering Event Coordinator | Sign Language Interpreter Specialist I |
| College Event and Venue Coordinator | Sign Language Interpreter Specialist II |
| College Event and Venue Technician | Student Services Aide |
| Community Services Aide | Student Services Assistant |
| Community Services Assistant | Student Services Specialist |
| Community Services Specialist | Student Support Services Representative |
| Costume Maker | Swimming Pool Supervisor |
| Examination Proctor | Theater Management Assistant |
| Farm Manager | |

E. An equitable distribution of overtime shall be made among qualified employees of a given office or unit as the circumstances permit. Need, seniority, availability, skills, and fitness are proper factors for consideration in making this distribution.

F. Classes whose primary duties and responsibilities meet the criteria for exemption from overtime compensation may be designated as Executive, Administrative, or Supervisory in accordance with the following guidelines, except as provided in Paragraph F.5., below:

1. Supervisory

The primary duties and responsibilities consist of the supervision of a major operating unit or its equivalent, and typically encompass the following characteristics:

- a. Customarily and regularly plan, organize, direct, and review the work of other employees.
- b. Customarily establish procedures regarding the operations of the assigned unit.
- c. Customarily and regularly exercise discretionary powers and sanctions.
- d. Customarily and regularly do not include the performance of duties similar to those of subordinates.

2. Administrative

The primary duties and responsibilities consist of the administration of a major organizational unit, or its equivalent, and typically encompass, in addition to those listed in Paragraph 1, above, the following characteristics:

- a. Customarily and regularly direct the activities of the assigned unit through subordinate supervisory employees.
- b. Customarily establish policies regarding the operations of the unit.
- c. Customarily and regularly review recommendations and decisions of subordinates which significantly impact the District.

3. Executive

The primary duties and responsibilities consist of senior-level management of a major division or subdivision and typically encompass, in addition to those listed in Paragraph 2, above, the following characteristics:

- a. Customarily and regularly make recommendations affecting District-wide operations or personnel.
- b. Customarily and regularly make policy presentations to the Board of Trustees.

4. The Personnel Commission may designate other classes as Executive, Administrative, or Supervisory when special circumstances warrant exceptions to the definitions above.
5. Classes defined in this rule as supervisory may receive overtime compensation at a rate equal to the normal rate of pay, except for those classes that have been claimed by an exclusive bargaining unit, under the following conditions:

The Chancellor or their designated representative shall have discretionary power to authorize overtime compensation, in accordance with the provisions of Paragraph C., above, to an employee at a rate equal to their normal rate of pay if the administrator of the employee's unit requests the overtime compensation based on one of the following conditions:

- a. An extraordinary or peak work load exists that cannot be accomplished during normal working hours; or
- b. The presence of the employee is required to supervise the work of their staff.

The District's current classes designated as Executive, Administrative, or Supervisory are as follows:

EXECUTIVE CLASSES

Associate Vice Chancellor of Capital Construction	Director of Human Resources
Associate Vice Chancellor of Facilities Planning and Sustainability	Director of Internal Audit
Chief Advancement Officer	Director of Safety and Security Services
Director of Accounting	General Counsel
Director of Budget and Management Analysis	Personnel Director
Director of Business Services	Vice Chancellor/Chief Facilities Executive
Director of Diversity, Equity, Inclusion, and Accessibility	Vice Chancellor/Chief Financial Officer
Director of Employee and Labor Relations	Vice Chancellor/Chief Information Officer
	Vice Chancellor of Human Resources
	Vice President, Administrative Services

ADMINISTRATIVE CLASSES

Accounting Manager	Director of College Facilities
Applications and Programming Manager	Director of Communications and Marketing
Assistant Director, Employee and Labor Relations	Director of Foundation
Assistant Director of Accounting	District IT Manager, College Technology Services
Assistant General Counsel	Finance Project Manager–Bond and Special Funding
Assistant Personnel Director	Health Benefits Manager
Associate General Counsel	Legislative and Governmental Relations Officer
Associate Vice President, Administrative Services	Network Infrastructure Systems Manager
Chief Information Security Officer	Procurement Manager
Chief Information Technology Manager,	Payroll Systems Manager
Engineering and Technology Services Delivery	Safety and Emergency Preparedness Manager
Chief Technology Project Manager	SAP/ERP Manager
College Financial Administrator*	Sustainability and Utility Program Manager
Deputy Chief Information Officer, College	
Technology and Infrastructure Services	

SUPERVISORY CLASSES

Administrative Officer to the Chancellor	Senior Administrative Analyst
Art Gallery & Museum Director	Senior Assessment & Selection Analyst*
Central Plant & Utilities Infrastructure Project Manager	Senior Compliance Investigator
College Store Manager*	Senior Employee & Labor Relations Specialist
Community Services Manager	Senior Financial Analyst
Enterprise Resource Planning (ERP)	Senior Procurement Specialist*
Team Leader (Student Systems)	Senior Research Analyst
Facilities Project Manager	SFP – Program Director
Financial Aid Manager*	Supervising Accountant*
General Foreman*	Supervising Auditor
Manager of Satellite College Operations	Supervising Construction Inspector
Operations Manager*	Supervising Software Systems Engineer
Payroll Systems Coordinator	Team Leader,
Professional Development Coordinator	Applications Development and Programming
Recruitment and Assessment Manager	Technical Training Coordinator
Registrar	Technology Project Manager
Risk Management Coordinator	Technology Service Desk Manager*
SAP Functional Team Leader	Training and Staff Development Manager

* Identifies classes that have been claimed by an exclusive bargaining unit.

- G. If required to work on a holiday as provided in Rule 816, HOLIDAYS, compensation or-compensatory time off shall be granted, in addition to regular pay received for the holiday, for:
1. employees in Executive, Administrative, or Supervisory classes on a straight time hour-for-hour basis within 12 calendar months following the months in which the holiday was worked.
 2. employees other than those identified in the above Paragraph G.1. at a rate equal to one and one-half times the regular rate of pay of the employee for actual hours worked.
- H. All classified employees who are required to work any hours that the Board of Trustees has designated as excused time shall be given equivalent time off prior to the end of the following pay period.
- I. This rule shall have no force and effect upon employees of any collective bargaining unit to the extent that the provisions of this rule are negotiable.