

U.S. OFFICE OF PERSONNEL MANAGEMENT

PAY & LEAVE PAY ADMINISTRATION

Fact Sheet: Compensatory Time Off

Description

Compensatory time off is

- Time off with pay in lieu of overtime pay for irregular or occasional overtime work, **or**
- When permitted under agency flexible work schedule programs, time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.

Employee Coverage

Compensatory time off may be approved in lieu of overtime pay for irregular or occasional overtime work for both FLSA exempt and nonexempt employees who are covered by the definition of "employee" at 5 U.S.C. 5541(2).

Compensatory time off can also be approved for a "prevailing rate employee," as defined at 5 U.S.C. 5342(2), but there is no authority to *require* that any prevailing rate (wage) employee be compensated for irregular or occasional overtime work by granting compensatory time off.

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. See 5 U.S.C. 6123(a)(1).

Mandatory

Agencies may require that an FLSA exempt employee (as defined at 5 U.S.C. 5541(2)) receive compensatory time off in lieu of overtime pay for irregular or occasional overtime work, but only for an FLSA exempt employee whose rate of basic pay is above the rate for GS-10, step 10. No mandatory compensatory time off is permitted for wage employees or in lieu of FLSA overtime pay.

Time Limits**FLSA-exempt employees**

An FLSA-exempt employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned.

An agency may provide that an FLSA-exempt employee who (1) fails to take earned compensatory time off within 26 pay periods or (2) transfers to another agency or separates from Federal service before the expiration of the 26 pay period time limit-

- Receive payment for the unused compensatory time off at the overtime rate in effect when earned or

- Forfeit the unused compensatory time off, unless failure to use the compensatory time off is due to an exigency of the service beyond the employee's control. (An FLSA-exempt employee whose earned compensatory time off would otherwise be forfeited due to an exigency of service beyond the employee's control must receive payment for the unused compensatory time off at the overtime rate in effect when earned.)

FLSA-nonexempt employees

An FLSA-nonexempt employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was earned.

If accrued compensatory time off is not used by an FLSA-nonexempt employee within 26 pay periods or if the FLSA-nonexempt employee transfers to another agency or separates from Federal service before the expiration of the 26 pay period time limit, the employee must be paid for the earned compensatory time off at the overtime rate in effect when earned.

Separation or leave without pay status due to service in the uniform service or on-the-job injury

An FLSA-exempt or nonexempt employee must be paid for compensatory time off not used by the end of the 26th pay period after the pay period during which it was earned at the overtime rate in effect when earned if the employee is unable to use the compensatory time off because of separation or placement in a leave without pay status (1) to perform service in the uniformed services or (2) because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

Compensatory time off to an employee's credit as of May 14, 2007

See 5 CFR 550.114(e) and 551.531(e) for special rules regarding the administration of compensatory time off to an employee's credit as of May 14, 2007.

Amount

1 hour of compensatory time off is granted for each hour of overtime work.

Questions and Answers on Compensatory Time Off in Lieu of Overtime Pay

- **Which regulations apply to an employee's unused compensatory time off upon a change in his or her FLSA exemption status?**

FLSA-exempt employees earn compensatory time off in lieu of title 5 overtime pay under 5 U.S.C. 5542 and 5 CFR 550.113, and are subject to OPM's compensatory time off regulations at 5 CFR 550.114. FLSA-nonexempt employees earn compensatory time off in lieu of overtime pay under section 7 of the FLSA (29 U.S.C. 207) and 5 CFR 551.501, and are subject to OPM's compensatory time off regulations at 5 CFR 551.531. Both 5 CFR 550.114 and 5 CFR 551.531 are derived from the statutory authority governing compensatory time off in 5 U.S.C. 5543 and, for employees under flexible work schedules, 5 U.S.C. 6123(a)(1). An employee's unused compensatory time off is subject to the regulations under which it was earned, regardless of the employee's current FLSA exemption status.

Example: An employee earns 16 hours of compensatory time off under 5 CFR 551.531 in lieu of FLSA overtime pay while employed in an FLSA-nonexempt position.

The employee is promoted to an FLSA-exempt position 6 months later, but does not use the 16 hours of compensatory time off within 26 pay periods after the pay period during which it was earned. As provided by 5 CFR 551.531(d), the employee must be paid for the 16 hours of unused compensatory time off at the overtime rate in effect when earned. The employee is entitled to receive payment for the compensatory time off even if the employing agency's policy under 5 CFR 550.114(d) is to require forfeiture of compensatory time off earned in lieu of title 5 overtime pay if the compensatory time off is not taken within 26 pay periods.

- **Under what circumstances do OPM regulations require an agency to either provide payment for, or require forfeiture of, an employee's unused compensatory time off?**

Agencies must provide payment for, or require forfeiture of, compensatory time off under the conditions set forth in 5 CFR 550.114(d)-(f) and 5 CFR 551.531(d)-(f), as applicable. The general rule is that accrued compensatory time off must be liquidated (i.e., paid) or forfeited (as applicable under agency policies) if not used by the end of the 26th pay period after the pay period during which it was earned. Exceptions to the general rule relate to the following circumstances: (1) the 3-year grandfathering period for any compensatory time off to an employee's credit as of May 14, 2007, which must be used by the end of the pay period ending 3 years after May 14, 2007; (2) transfer to another agency; (3) separation from Federal service; and (4) separation or placement in a leave without pay status in connection with service in the uniformed services or entitlement to workers' compensation based on an on-the-job injury. (When exception #4 applies, the employee must be paid for the unused compensatory time off; forfeiture is not an option.)

- **What entities are considered an "agency" for the purpose of triggering the payment/forfeiture of unused compensatory time off at the time of transfer to another agency?**

For the purposes of the compensatory time off regulations, the term "agency" is defined under 5 CFR 550.103 to mean a department (as defined in this section) and a legislative or judicial branch agency which has positions subject to subchapter V (Premium Pay) of chapter 55 of title 5, U.S. Code. The term "department" is defined under 5 CFR 550.103 to mean an executive agency and a military department. (See 5 U.S.C. 101-105 and 5541(1).) Since the military departments (Army, Navy, and Air Force) have standing as separate agencies, the rest of the Department of Defense as a group is treated as a separate agency.

- **May an agency provide payment for compensatory time off under circumstances in addition to those identified in OPM regulations?**

Yes. Agencies are required to provide payment for accrued compensatory time off under the conditions set forth in 5 CFR 550.114 and 5 CFR 551.531. However, an agency has discretionary authority to provide payment for accrued compensatory time off in other circumstances. This

discretionary authority should be exercised by issuing formal policies so that employees are treated consistently.

Additional situations in which an agency may choose to provide for payment of compensatory time off include, but are not limited to, the following:

Example 1: A Federal employee moves to a position with a different FLSA exemption status (i.e., from an FLSA-nonexempt position to an FLSA-exempt position or vice versa).

An employee moving to a position within the same agency that has a different FLSA exemption status may have his or her compensatory time off balance paid out according to that agency's policy at the time of his or her change in exemption status. Alternatively, an agency may choose to maintain that employee's compensatory time off after a change in FLSA exemption status, subject to the regulations under which the compensatory time off was earned. (Under this latter alternative, the agency must maintain separate balances for compensatory time off earned under 5 CFR 551.531 in lieu of FLSA overtime pay versus compensatory time off earned under 5 CFR 550.114 in lieu of title 5 overtime pay.)

Example 2: An employee transfers to another component within the same agency.

The agency may choose to provide payment for compensatory time off when a Federal employee transfers to another component within the same agency. Conversely, the agency may allow the employee to maintain his or her compensatory time off balance in the new position, subject to the regulations under which it was earned. (See A3 for information on the definition of "agency" for this purpose.)

Example 3: An employee is placed in a Senior Executive Service (SES) position.

Each agency should establish policies governing the handling of accrued compensatory time off for an employee who is placed in an SES position and thus no longer covered by 5 U.S.C. 5543. The agency may choose to (1) provide payment for any balance of compensatory time off accrued before placement in the SES position at the rate at which it was earned; or (2) allow the employee to use the accrued compensatory time off while in the SES position, subject to the normal time limits established in OPM regulations.

- **May an agency require an employee to forfeit unused compensatory time off under circumstances in addition to those identified in OPM regulations?**

An agency may require an employee to forfeit legitimately earned compensatory time off only under the circumstances identified in OPM regulations. An agency may not establish a policy requiring an employee to forfeit unused compensatory time off earned under 5 CFR 550.114 in lieu of title 5 overtime pay in circumstances not identified in that section. An agency may not require an employee to forfeit compensatory time off earned under 5 CFR 551.531 in lieu of FLSA overtime pay under any circumstances.

References

- 5 U.S.C. 5543 and 5 U.S.C. 6123(a)(1)
- 5 CFR 550.114 and 551.531
- Comptroller General opinions: B-183751, October 3, 1975, and October 19, 1976; 58 Comp. Gen. 1 (1978)
- Section 1610 of Public Law 104-201, the National Defense Authorization Act, 1997

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