

Compensatory Time

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Reference Number: MTAS-1531

Compensatory time (comp time) is time off in lieu of monetary overtime compensation at a rate of not less than one and one-half hours of compensatory time for each hour of overtime worked. The law (29 C.F.R. § 553.21) “authorizes a public agency to provide compensatory time in lieu of overtime payments so long as there is an employment agreement or understanding to use comp time. If it was the employer’s practice prior to April 15, 1986, to pay existing employees compensatory time, then that practice shall suffice as an understanding permitting the use of compensatory time.”

“The agreement or understanding to use compensatory time for employees who do not have representation must be arrived at before the performance of the work.” 29 C.F.R. § 553.23(c)(1). “The agreement does not have to be in writing, but a record of its existence must be kept. The agreement doesn’t have to be the same for all employees and the employer does not need to make compensatory time available to all employees.” 29 C.F.R. § 553.23(c)(1).

“The compensatory time that an employee earns constitutes a legal liability for the employer.” 29 C.F.R. § 553.22(a). Employees may accrue up to 240 hours of compensatory time (160 hours actual overtime worked). Employees who work in public safety activities, emergency response activities and seasonal activities may accumulate up to 480 hours of comp time (320 hours actual overtime worked). 29 C.F.R. § 553.22(b).

“An employee who has accrued compensatory time and requests use of the time must be permitted to use the time off within a ‘reasonable period’ after making the request if it does not ‘unduly disrupt’ the operations of the agency.” 29 C.F.R. § 553.25(a). At the same time, the DOL emphasizes that “an employee has a right to use the compensatory time earned and must not be coerced to accept more compensatory time than an employer can realistically, and in good faith, expect to be able to grant.” 29 C.F.R. § 553.25(b).

The FLSA contains a provision (29 U.S.C. § 207(o)(5)) addressing an employer’s general obligation to honor an employee’s request to use compensatory time. The 9th Circuit Court of Appeals, in *Collins v. Lobdell*, 188 F.3d (1999), affirmed “an employer’s right to compel use of such time.” Then in May 2000, the U.S. Supreme Court resolved the issue, holding that “nothing in the FLSA or its implementing regulations prohibit a public employer from compelling the use of compensatory time.” *Christensen v. Harris County*, 120 S. Ct. 1655 (May 1, 2000).

Another important issue surrounding compensatory time has to do with payment for unused compensatory time in the event an employee leaves the public agency. According to DOL regulation “payments for accrued compensatory time earned after April 14, 1986, may be made at any time and must be paid at the regular rate earned by the employee at the time the employee receives payment.” 29 C.F.R. § 553.27(b). Upon termination of employment, an employee must be paid for unused compensatory time figured at:

1. The average regular rate received by such employee during the last three years of employment; or
2. The final regular rate received by such employee, whichever is higher.

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Source URL (retrieved on 09/22/2019 - 8:13am): <https://www.mtas.tennessee.edu/reference/compensatory-time>

