

From: Jones, Bonnie Curran
Sent: Monday, July 16, 2012 11:40 AM
To: Darden, Ron (Ron)
Subject: RE: comp time

Hi Ron,

There is a legal limit to the amount of compensatory time that can be accumulated. At some point the city MUST pay it out (at the higher applicable rate of pay) or require the employee to take the equivalent in time off. I highlighted the maximum accrual amounts below. I will send you a COMP policy or sample policy language in a separate email. Let me know if you need anything else.

Bonnie Jones

This information applies to all government agencies--with the exception of the federal government--but including counties, municipalities, municipal corporations, political subdivisions, school districts and state agencies.

The use of compensatory time, more commonly referred to as "comp time" is only available to government employers. Employers in the private sector or non-profit agencies that are not part of a federal, state or local government agency are not permitted to use compensatory time in place of the payment of overtime.

All state and local government agencies are subject to the Fair Labor Standards Act that regulates minimum wage, overtime, recordkeeping and the employment of minors
Compensatory Time (or "Comp Time") Generally

Q. Are local government agencies allowed to use comp time in lieu of the overtime requirement?

A. Yes, when budgeted funds are not available to pay overtime, government agencies may use compensatory time. It must be computed at one and one-half hours for each hour of overtime worked.

Q. Do the federal caps on comp time apply?

A. Yes. Federal law allows a maximum of 240 hours of comp time which represents 160 hours worked. If an employee works any additional overtime after 240 hours have been accrued, the time must be paid. The agency may set lower caps on comp time.
29 CFR 553.21(3)(A).

Q. May the agency set limits on the use of comp time?

A. Employees must be permitted to use comp time within a reasonable period after requesting time off, unless it would unduly disrupt the operations of the agency. 29 CFR 553.25.

Q. May the employer cash comp time out at the rate that was in effect when the time was earned?

A. No. Federal law requires that comp time be cashed out at the rate earned by the employee at the time the employee receives the payment. In cases of termination, comp time must be cashed out at the current rate earned or the average rate earned during

the last three years of employment, whichever is higher. 29 CFR 553.27.

Comp Time for Seasonal Workers

Q. Are seasonal employees allowed higher limits on the accrual of comp time?

A. Yes. Workers in seasonal jobs having periods of significantly increased demand of a regular and recurring nature may accrue a maximum of 480 hours of comp time if during those periods they are likely to accrue more than 240 hours based on the employer's past experience with similar employment situations.

Comp Time for Fire, Police & Emergency Response Personnel

Q. Is there a higher comp time limit available to fire and police protection personnel and to emergency response personnel?

A. Yes, a 480-hour limit is available to these employees as well as to drivers and dispatchers of emergency response vehicles in connection with fire or police protection.

Q. What are the overtime requirements for firefighters?

A. If an agency employs five or more firefighters, the agency may pay them overtime after 53 hours in a week. This only allowed only for employees who are actually engaged in fire protection activities.

Comp Time for Law Enforcement

Q. Are police officers subject to the payment of overtime?

A. Yes, federal law requires that in governments employing five or more law enforcement personnel, law enforcement officers and subordinates who have power to arrest must be paid one and one half times their regular rates for hours worked over 43 in a week, or 171 in a 28-day period.

Further Reading

Federal regulations are available from the US. Department of Labor, Telephone: (503) 326-3057.