

Morristown: Discussion of Comp-Time Use for Exempt Employees

(2016 by Pat Hardy, MTAS)

Introduction

Morristown Vice-Mayor Kay Senter asked MTAS to look at the practice of providing compensatory time for “overtime” hours worked by exempt employees. Specifically, how widespread is this practice among cities, and what are the pros and cons associated with the practice?

Background

The Federal *Fair Labor Standards Act* (FLSA) requires (with a few exceptions) overtime pay, at the rate of time and one half the regular rate, for all hours worked in excess of 40 in any 7-day period of time. Certain employees are exempt from this requirement, and thus there is no requirement they be paid additional hours for those worked in excess of 40 in a 7-day period of time.

There are generally four classes of exemptions for public employees: “Administrative”, “Executive”, “Professional”, and “Computer”. Among the “tests” to determine if a position is exempt are requirements related to job duties, method of payment to the employee (must meet definitions for “salaried”), and a minimum wage threshold (currently \$23,660 but changing to \$47,476 in December of 2016). Needless to say, this change will significantly limit the number of employees who are exempt.

The FLSA allows cities to provide compensatory time to employees who work overtime, in lieu of cash payments, such compensatory time also being provided at the rate of time and one half. There is a litany of regulations related to how and when compensatory time for non-exempt employees is applied.

It is important to note, FLSA requirements regarding overtime are minimum requirements. Thus there is nothing to say a city can’t be more liberal in its provision of wages to employees. In other words, cities can pay overtime even for exempt employees, if they so desire, and this overtime may be provided in the form of compensatory time. However, there is no requirement this time be provided at the rate of time and one half. In addition, there is no requirement that a city exempt any position from overtime at the rate of time and one half. Thus all positions in the workforce can be paid overtime at this rate if a city so desires. Of course very few would do so due to the significant increase in personnel costs.

Each exempt position in the workforce should have a completed exemption form in the employee’s personnel file, indicating that an analysis of the position has been undertaken in order to correctly determine exemption status.

Methodology

As a part of this report MTAS surveyed a number of cities in the 10,000 to 50,000 population group in order to determine their overtime practices for exempt employees. In addition, all MTAS General Management Consultants and Personnel Consultants were asked to determine how many, if any, of the cities in their territory, in the 10,000 to 50,000 population group, provide overtime (either in cash or compensatory time) for exempt employees.

Consultant responses:

Of the nine MTAS General Management Consultants (who cover all 345 cities in the state) only two cities were identified as having a policy of extra time off for exempt employees. This was confirmed by the two MTAS Personnel Consultants. However, it should be noted this was from recollection rather than an examination of all city *Personnel Policies*. In the two cases where policies did exist they are called something other than “Comp Time.”

For example, the City of Cleveland has an “Administrative Leave” policy which allows the City Manager to grant leave, either paid or unpaid, to exempt employees. In this case actual hours worked are not tracked and translated into an hour-for-hour time off practice. On the other hand, Morristown has a more formal practice referred to as “Management Leave.” Certain restrictions (including limits) are placed on the leave. In their case actual hours worked are tracked and translated into hour-for-hour leave.

With these two exceptions, from our experience the practice does not appear to be widespread (it should be noted, however, MTAS consultants indicate the practice is probably more widespread in smaller communities).

Nearly all consultants indicated the informal practice of providing “compensatory” time-off for exempt employees is widespread. One consultant, a former city manager, characterized it well by stating, “On an informal level the supervisor should be flexible and let them bow out of town on an afternoon without tracking it when they’ve put in a particularly long week or month... Or cut out early... you know the drill.”

Survey responses:

MTAS sent a 7-question survey about the practice of providing compensatory time to exempt employees to 10 cities in the 10,000 to 50,000 population group. Eight cities responded to the survey. Only two of these have a formalized compensatory time policy for exempt employees. Here is a summary of their programs:

- The City of Mount Juliet:
 - o They allow compensatory time for attendance at after-hours meetings only.
 - Prior approval is required.
 - o It is provided at the employee’s straight-time rate, rather than time and one half.
 - o Unused time is not paid upon separation.
 - o A cap of 120 hours limits the amount of time department heads can accrue.
 - o There is no time frame during which the accrued compensatory time must be used.

- The City of Oak Ridge:
 - o They allow compensatory time only if the employee is “called back” to work or is required to work on a weekend.
 - Prior approval is required.
 - o It is provided at time-and-one-half the regular rate.
 - o Unused time is paid upon separation.
 - o A cap of 40 hours limits the amount of time which can be accrued.

Pros and Cons of the Practice

Pros related to providing formal compensatory time off for exempt employees:

- It motivates employees to work extra hours as necessary.
- It may more fairly “compensate” employees who work extra hours, especially those who are exempt but close to the minimum FLSA salary threshold for exemption.
- It communicates to the employee that management is paying attention to the hours they work.
- It helps compensate exempt employees who are expected and/or required to routinely work extra hours.

Cons related to the providing formal compensatory time off for exempt employees:

- It erodes the definition of ‘salaried.’ That is, “salaried” generally means working whatever hours are required for an agreed upon wage. Providing compensatory time for extra hours essentially alters this definition.
- It can become excessive if no oversight exists.
- Employees may begin to track all overtime, even small amounts which would be considered a normal work level for salaried employees.
 - o It is hard to draw the specific line between extra hours worked which are excessive and may thus may need compensatory time, and hours which are simply expected of salaried employees.
- Wage levels for exempt employees are usually higher than those for non-exempt employees due to a number of factors, one of which is the expectation that extra hours will be required from time to time. Thus the “compensation” for exempt employees is normally built into their wage structure. Additional compensation is not normally required.

Considerations if a City Provides Comp Time on a Formal Basis to Exempt Employees

- Clarify the practice in the *Personnel Policies and Procedures*.
- Be careful about a policy to cash-out this overtime on separation. This can be costly, especially if paid at an employee’s current rate (as opposed to the rate at which they earned the overtime).
 - o Accurate records should be kept if payouts are provided.
 - o It may be better to allow the employee to separate early rather than cashing out.
- In all cases the “overtime” should probably be provided on a straight-time rather than time and one half basis.
- The supervisor should approve any overtime, otherwise there is no check and balance, and it could become excessive.
- Excessive use may cause short-staffing in crucial positions.
- The practice should have a cap in order to limit overtime levels.
- It should be called something other than “compensatory time”, because this phrase is normally associated with requirements from the *Fair Labor Standards Act*.