

# COMPENSATORY TIME POLICY



## STATE OF DELAWARE COMPENSATORY TIME POLICY Effective January 1, 2015

### Purpose

The purpose of this policy is to establish consistency across state agencies on compensatory time usage and payment and to ensure conformity with the federal Fair Labor Standards Act (FLSA).

### Eligibility

All state employees are subject to this policy except for collective bargaining employees who have negotiated compensatory time in their respective bargaining agreements, school district employees and higher education employees. Each agency shall designate at least one individual in their organization who will determine whether FLSA covered positions receive overtime compensated via cash or compensatory time.

### Definitions

- **FLSA Covered Positions\*:** Positions that are covered by the FLSA (also known as FLSA non-exempt).
- **FLSA Non-Covered Positions\*:** Positions that are not covered by the overtime and minimum wage provisions of the FLSA (also known as FLSA exempt).
- **FLSA Compensatory Time:** Compensatory time earned by FLSA Covered (non-exempt) employees.
  - For time worked beyond 37.5 hours or 40 hours in a standard workweek.
    - FLSA covered (non-exempt) positions with a standard workweek of 37.5 earn overtime at straight time between 37.5 and 40 hours.
    - FLSA covered (non-exempt) employees with a standard workweek of either 37.5 or 40 hours earn overtime at time and

- a half (1.5) for hours worked in excess of 40 in a workweek.
- For equal time off earned by essential employees during a Severe Weather Conditions and Emergencies. The equal time off, without exception, is at straight time and can only be earned for hours worked during the employee's regular scheduled work hours or shift that fall during the specified hours of closing.
- For additional hours beyond those for which they are routinely compensated during a week in which a State holiday falls. (MR 4.14.2)

(FLSA covered/non-exempt positions are not eligible for alternative work schedules that exceed 40 hours in a given week.)

- **Merit Compensatory Time:** Compensatory time earned by FLSA Non-covered (exempt) employees. **This time shall be used within 180 calendar days of accrual or be forfeited.** Merit Compensatory time may be earned for:
  - Preapproved time worked by FLSA non-covered (exempt) employees greater than one half hour over the standard workday,
  - Hours worked in excess of 75 or 80 hours in a standard pay period at straight time (with the exception of those positions granted exception under Merit Rule 4.13.8 who may earn compensatory time at time and a half (1.5) for hours in excess of 40).
  - The equal time off earned by essential employees during Severe Weather Conditions and Emergencies. The equal time off, without exception, is at straight time and can only be earned for hours worked during the employee's regular scheduled work hours or shift that fall during the specified hours of closing.
  - Preapproved additional hours beyond those for which they are routinely compensated during a week in which a State holiday falls. (MR 4.14.2)
  
- **Casual/seasonal employees** are not Merit employees and are not eligible for compensatory time. Casual/seasonal employees are paid on an hourly basis, and therefore are FLSA covered or non-exempt. They will be paid at time and a half after working 40 hours per week unless FLSA law provides for an exception (such as seasonal employees working in state parks).

\* NOTE: Employees may contact their human resource office to determine the FLSA designation of their position. Human resource professionals can verify this status through the alpha job code listing human resource report within the PHRST system.

## Policy

The basis for this policy shall be found in the Merit Rules.

1. There is a cap on compensatory time of 240 payable hours for both FLSA covered (non-exempt) and non covered (exempt). In the case of FLSA covered (non-exempt) 240 payable hours is equal to 160 hours at time and a half. The only exception to this rule would be those categories that qualify under FLSA as public safety with a cap of 480 hours.
2. FLSA Compensatory time earned by FLSA covered (non-exempt) employees is for:
  - a. Hours worked between 37.5 and 40 in one pay week is straight time
  - b. Hours worked in excess of 40 in one pay week is time and a half
  - c. Equal time off earned by essential employees during covered hours of Severe Weather Conditions and Emergencies events.
  - d. Additional hours beyond those for which they are routinely compensated during a week in which a State holiday falls.
3. All compensatory time granted to FLSA non-covered (exempt) employees is at straight time with the exception of those positions granted exception under Merit Rule 4.13.8 who may earn Compensatory Time at time and a half (1.5) for hours in excess of 40
4. Employees who request to attend conferences, seminars or other training during weekends or after their regularly scheduled day are not entitled to compensatory time unless in a position covered by the FLSA. Employees may flex their work time around the event with the approval of their supervisor. If management requires the conferences, seminars or other training, then an employee may be entitled to compensatory time. Employees in an FLSA non-exempt position must be compensated if required to attend conferences, seminars or other training during times when they would not normally be required to work. The hours the employee would be compensated in this latter case would exclude the time that the individual would normally travel to his/her job site.
5. All overtime services performed beyond the standard workweek must be approved in advance whenever possible. Compensation, either in the form of cash payment or compensatory time, must be determined in advance between the employee and the designated authority within the agency. Supervisors should authorize overtime only when in the best interest of the State of Delaware. Overtime should not be authorized for any assignment, which could have been completed during regular working hours. In accordance with Merit Rule 4.13.1, the method of compensation for overtime is subject to the availability of funds and/or the operational needs of the agency. In emergencies, if prior approval is not obtained, then both the supervisor and the supervisor's supervisor must provide authorization for compensation. If the supervisor is a Division Director or higher, then only that individual's approval is required. However, supervisors who knowingly accept work accomplished by FLSA non-exempt employees on overtime, or who should have known that such work was accomplished on overtime, must document the reason for such FLSA overtime. The FLSA non-exempt

employee who chooses to perform overtime services that are not authorized or required, in advance, by someone within his/her chain of command may be subject to disciplinary/corrective action.

6. FLSA non-covered (exempt) employees may be paid only for overtime if approved by the Director of Human Resource Management per Merit Rule 4.13.6. FLSA non-covered (exempt) employees may be compensated at the 1.5 times rate only per Merit Rule 4.13.8. Compensatory time earned in these instances shall be Merit Compensatory Time and shall be used within 180 calendar days of accrual or be forfeited.
7. FLSA non-covered (exempt) employees will not receive compensatory time for overtime worked less than thirty minutes per day. FLSA exempt employees shall not be compensated for being on-call unless covered under a separate merit rule.
8. Management should encourage flex time (within the 7 day period earned) to reduce compensation for overtime service and should be judicious in granting the use of annual leave and compensatory time use so as to minimize the eligibility for compensation for overtime service. However, management should not require that time be flexed in lieu of use of scheduled sick leave, if used appropriately, regardless of how such use affects compensation for overtime service.
9. For FLSA covered (non-exempt) employees unused earned compensatory time must be paid out prior to transfer, promotion, demotion, and separation.
10. For FLSA non-covered (exempt) employees unused earned Merit compensatory time is forfeited upon transfer, promotion, demotion, separation and in the case of death.
11. An employee may not earn compensatory time while on paid leave (annual leave, sick leave, compensatory time, etc.).
12. Accumulated compensatory time should be used as soon as possible after accrual provided such usage does not disrupt the operations of the agency. The approval process for the use of compensatory time should be similar to the approval process for annual leave. Approval for the usage of compensatory time should not be unreasonably withheld.
13. Compensatory time may never be taken before it is earned.
14. Supervisors shall be held accountable for ensuring that an official record is maintained of all time earned and used, including overtime and compensatory time. Employees are responsible for knowing their own compensatory accrual and usage thereof.
15. For record keeping purposes, compensatory time (unless otherwise specified in this policy) shall be accrued and taken in quarter hour intervals. Less than seven minutes into the quarter is not counted, but seven minutes or more is rounded up to the next quarter hour.
16. An employee shall not be approved to work overtime that would exceed a balance of 100 hours without the approval of the cabinet secretary/agency head (or his/her designee).
17. FLSA covered (non-exempt) employees on an 8/80 schedule also receive time and a half for working over 8 hours in any given day even though they

- may not exceed 80 hours during the fourteen-day period.
18. FLSA covered (non-exempt) employees who are required to return to the work site are eligible for call back pay per the merit rules.
  19. As long as all other applicable laws, rules and regulations are not violated, agencies may make more restrictive compensatory time policies in order to meet operational needs, but cannot make less restrictive policies.

This policy is not intended to create any individual right or cause of action  
not already existing and recognized under state or federal law.

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