Compensatory Time Off for Employees Subject to the Fair Labor Standards Act

Introduction

Eligible employees who record more than 40 hours of actual work time in a work week may be compensated for the overtime in one of two ways: overtime pay or compensatory time off. An employee must receive prior approval from the supervisor before working more than 40 hours in a week. It is the expectation that employees will be paid for time worked in excess of 40 hours per week unless management decides to provide compensatory time off based upon budgetary constraints and/or operational needs of the department. As of the effective date of this policy, it is a condition of employment that employees who are subject to the wage-hour provisions of the Fair Labor Standards Act (FLSA subject) accept compensatory time off as described in this policy.

Eligibility

All permanent and temporary SPA and EPA FLSA subject employees are entitled to overtime compensation (see the “Hours of Work and Overtime Compensation” Policy in the Office of State Personnel’s SPA Policy manual). Some may be eligible, in the alternative, for compensatory time off under this policy.

The wage-hour subject or exempt status is based upon the FLSA status of the employee's position as determined by the Human Resources Division.

Eligible:

SPA Permanent FLSA Subject Employees:  All permanent SPA subject employees who record more than 40 hours of actual work time in a work week are eligible to receive either overtime pay or compensatory time off.

EPA Permanent FLSA Subject Employees: All permanent EPA subject employees who record more than 40 hours of actual work time in a work week are eligible to receive either overtime pay or compensatory time off.

Ineligible:

SPA Permanent FLSA Exempt Employees: Permanent SPA employees who are exempt from the FLSA are not eligible for overtime pay or compensatory time off under this policy.
EPA Permanent FLSA Exempt Employees: Permanent EPA employees who are exempt from the FLSA are not eligible for overtime pay or compensatory time off under this policy.

SPA Temporary Employees: All SPA temporary employees who are FLSA subject must receive overtime pay if they record more than 40 hours of actual work time in a work week. They are not eligible to receive compensatory time off under this policy.

EPA Temporary Employees: All EPA temporary employees who are FLSA subject must receive overtime pay if they record more than 40 hours of actual work time in a work week. They are not eligible to receive compensatory time off under this policy.

Coverage

FLSA subject employees earn time-and-one-half for all hours worked in excess of 40 hours in a work week. An employee must actually work over 40 hours to earn overtime compensation or compensatory time off. Paid time that is not considered work time (i.e., leave or paid time off) does not count as time worked for the purpose of determining employee eligibility for overtime or compensatory time off.

Working more than eight hours in a work day does not constitute overtime or require compensatory time off. The additional accrual occurs only after working more than 40 hours in a work week.

Management should give as much advance notice as possible for the need to work overtime so that employees may make any arrangements necessary to enable them to perform the overtime work. Management must ensure that funds are available before authorizing work that is compensated with overtime pay.

Note: Some departments may require occasional or regular mandatory overtime as a condition of employment. Such a requirement must be explained to job candidates during the interview and selection process.
**Compensatory Time Off**

When management decides that overtime pay is not possible due to budgetary constraints and/or operational needs of the department, compensatory time off may be granted in lieu of overtime pay. Each department’s management should consider existing workloads, staffing requirements, and availability of funds in deciding which compensation option will be used.

For eligible FLSA subject employees, compensatory time off is paid time off equal to one-and-one-half times the amount of time worked in excess of 40 hours in a work week.

For example: An employee who works 44 hours in a work week would receive the 40 hours of pay and accrue 6 hours of compensatory time off (4 hours x 1.5).

When an employee plans to take compensatory time off, such compensatory time off must be scheduled in advance and approved by the supervisor. Every effort should be made to accommodate the preference of the employee when scheduling compensatory time off unless the requested compensatory time off will unduly disrupt the department’s operations. Compensatory time off may be used for any purpose, but must be used prior to the use of vacation leave.

**Amounts**

The maximum amount of compensatory time off an employee may carry at any time is 240 hours (160 hours of work x 1.5) prorated for part-time employees. Any overtime in excess of the 240 hour maximum cannot be considered compensatory time off; instead, the overtime must be paid in the employee's next paycheck.

**Payouts & Transfers**

Compensatory time off must be taken within 12 months from the date on which it was accrued. If management is not able to schedule the compensatory time off within this time period, it must be paid as overtime to the employee no later than in the next pay cycle following the end of the 12 months.

Compensatory time off must be used prior to using vacation leave, or prior to the employee going on Leave Without Pay.

**Note:** If an eligible SPA or EPA employee is scheduled for a
period of leave, and will not be able to use earned compensatory time off due to expire during the absence, then all such compensatory time off must be paid out no later than in the next pay cycle following the end of the 12 months expiration date.

When an employee leaves UNC General Administration, he or she shall be paid for all accumulated and unused compensatory time off. Compensatory time off cannot be transferred.

Employees whose FLSA status changes from “Subject” to “Exempt” must be paid for all accumulated and unused compensatory time off at the time of the status change.

See the “Hours of Work and Overtime Compensation” Policy in the Office of State Personnel’s SPA Policy manual to determine the hourly rate of pay for paying overtime.

The effective date of this policy for Non-Exempt SPA employees will be March 30, 2009
The effective date of this policy for Non-Exempt EPA employees will be April 1, 2009

This policy has been reviewed and approved for SPA employees by:

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Original Signed By
Erskine Bowles
________________________
March 15, 2009
Date