

## COMPENSATORY TIME OFF IN LIEU OF OVERTIME PAY FOR SCHEDULE C EMPLOYEES

1. **PURPOSE.** The purpose of this notice is to provide policy and guidance for administering compensatory time off in lieu of overtime pay for all Schedule C employees within the Department of Veterans Affairs (VA). Compensatory time off is time off with pay in lieu of overtime pay for irregular or occasional overtime work. The amount of compensatory time off is equal to the amount of time spent in the irregular or occasional overtime work. For employees on a flexible work schedule program, compensatory time off also includes time off with pay in lieu of overtime pay for regularly scheduled overtime work. These procedures apply to all Schedule C employees. The content of this notice applies to compensatory time off in lieu of overtime.
2. **AUTHORITIES.**
  - a. [5 C.F.R. part 550, Pay Administration \(General\)](#).
  - b. [5 C.F.R. part 551, Pay Administration under the Fair Labor Standards Act](#).
3. **POLICY.**
  - a. **General Information.** Each agency establishes its own policies on the use of overtime pay and compensatory time off for Schedule C employees within the requirements of the law and Office of Personnel Management (OPM) regulations. Schedule C employees may be authorized compensatory time off in lieu of overtime pay for irregular or occasional overtime work. For employees not covered by the Fair Labor Standards Act (FLSA) overtime provisions (Exempt), accrued compensatory time off not taken within the time limit prescribed in [paragraph 3.d](#) of this notice will be forfeited unless failure to use the compensatory time off is due to exigencies of the service as determined by the supervisor. FLSA Exempt employees that are unable to use the compensatory time off due to exigencies of the service will receive payment for the unused compensatory time off at the overtime rate in effect when it was earned. The amount of compensatory time off authorized may not exceed the limitations outlined in [paragraph 3.d](#) below. The compensatory time off must be approved in writing prior to the work being performed. While it is both legal and appropriate for Schedule C staff to earn compensatory time off, supervisors are expected to be judicious in its use.
  - b. **Granting Compensatory Time Off In lieu of Overtime Payment.** Compensatory time off in lieu of overtime payment for irregular or occasional overtime work will be granted to Schedule C employees within the provisions outlined below.

- (1) Employees not covered by FLSA (i.e., FLSA exempt):
    - (a) May be approved in lieu of overtime pay for irregular or occasional overtime work (i.e., work that is not regularly scheduled).
    - (b) May be approved in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work only for employees working under flexible work schedules.
    - (c) Management may require the use of compensatory time off only for FLSA exempt employees with pay greater than GS-10, step 10 (including applicable locality pay and special rate supplements), and only in lieu of overtime pay for irregular or occasional overtime work.
    - (d) VA may not allow an FLSA exempt employee to earn compensatory time off by working overtime hours if the employee would be unable to receive overtime pay for the same hours because of the biweekly overtime pay cap. The value of earned compensatory time off is included in applying the premium pay cap (based on the amount of overtime pay the employee would have earned).
    - (e) An employee must use accrued compensatory time off within 26 pay periods. At that time, unused compensatory time off will be forfeited, except as described in [paragraph 3.d\(2\)](#) below.
  - (2) Employees covered by FLSA (i.e., FLSA non-exempt):
    - (a) May be approved in lieu of overtime pay for irregular or occasional overtime work, but only at the employee's request.
    - (b) May be approved in lieu of overtime pay for regularly scheduled, or irregular or occasional overtime work at the request of an employee, but only for employees working under flexible work schedules.
    - (c) FLSA non-exempt employees may never be ordered to take compensatory time off in lieu of overtime pay.
    - (d) The value of compensatory time off earned by FLSA non-exempt employees is not included in applying the premium pay cap.
    - (e) If earned compensatory time off is not used within 26 pay periods, or if the employee transfers or separates from the agency, the employee must receive payment for the unused compensatory time off at the overtime rate in effect when earned.
- c. **Documentation of FLSA Status (Non-exempt or Exempt).** It is important to know which set of overtime rules (FLSA or title 5) cover individual employees.

- (1) Position Description. The actual duties an employee performs, which is documented in their position description, determine whether an employee is non-exempt (covered) or exempt (not covered) under the minimum wage and overtime provisions of the FLSA.
- (2) Notification of Personnel Action (SF-50). The servicing human resources office determines FLSA coverage, and it is stated on the employee's Standard Form 50 (SF-50), box 35, as N (non-exempt) or E (exempt). Non-exempt employees are covered by the FLSA overtime rules while exempt employees are covered by title 5 overtime rules. The electronic Official Personnel File (eOPF) for each employee contains the SF-50 (See [EHRI Electronic Official Personnel Folder \(opm.gov\)](https://www.opm.gov/eOPF/)).

d. **Time Limits on Compensatory Time.**

- (1) Compensatory time off should be taken as soon as possible after it is earned, but not later than the end of the 26th pay period following the pay period in which it is earned. Compensatory time off may be taken only during the employee's basic workweek.
- (2) If accrued compensatory time off is not used by an FLSA non-exempt employee within 26 pay periods or if the FLSA non-exempt employee transfers to another agency or separates from Federal service before the expiration of the 26 pay period time limit, the employee must be paid for the earned compensatory time off at the overtime rate in effect when earned. For employees not covered by the FLSA (Exempt), compensatory time off not taken within the time limit prescribed above because of the exigencies of the service will be paid at the overtime rate in effect when earned. If compensatory time is not taken within this period because of personal reasons not due to the exigencies of service, the right to compensatory time off or overtime pay for the duty performed is forfeited.
- (3) In cases of internal movement within VA, compensatory time off must be taken or paid for prior to the effective date of transfer. Under no circumstances will an obligation for compensatory time off be transferred to a VA facility.

**NOTE:** Managers should be aware compensatory time under 5 U.S.C. § 5543 is counted as premium pay for FLSA exempt employees when applying premium pay limitations. For example, under 5 U.S.C. § 5547, an employee may receive compensatory time off only to the extent that, it would not cause the aggregate rate to exceed the greater of the maximum of GS-15 Step 10 (including any applicable special salary rate or locality rate of pay) (e.g., \$172,500 for 2021 in Washington, DC) or the rate payable for level V of the Executive Schedule (e.g., \$161,700 for 2021). See 5 C.F.R. § 550.114(g). An employee who is prohibited by that aggregate

compensation limitation from receiving overtime compensation may not receive compensatory time off in lieu of such prohibited compensation.

#### 4. DEFINITIONS.

- a. **Administrative Workweek.** OPM defines Administrative Workweek in 5 C.F.R. § 550.103 as any period of seven consecutive days designated in advance by the head of the agency under section 6101 of title 5, United States Code.
- b. **Alternative Work Schedule.** OPM defines Alternative Work Schedule in the [Handbook on Alternative Work Schedules](#) as both flexible work schedules and compressed work schedules.
- c. **Basic Work Requirement.** OPM defines Basic Work Requirement in the [Handbook on Alternative Work Schedules](#) as the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.
- d. **Biweekly Pay Period.** The pay period for an employee that covers two administrative workweeks as authorized under 5 U.S.C. § 5504.
- e. **Compressed Work Schedule.** 5 U.S.C. § 6121 defines Compressed Work Schedule as
  - (1) In the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays.
  - (2) In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays.
- f. **Overtime Hourly Rate.**
  - (1) For employees with rates of basic pay equal to or less than the rate of basic pay for GS-10, step 1, the overtime hourly rate is the employee's hourly rate of basic pay multiplied by 1.5.
  - (2) Under 5 U.S.C. § 5542(a)(2), for employees with rates of basic pay greater than the basic pay for GS-10, step 1, the overtime hourly rate is the greater of-
    - (a) The hourly rate of basic pay for GS-10, step 1, multiplied by 1.5, or
    - (b) The employee's hourly rate of basic pay.
  - (3) The hourly overtime pay limitations described in paragraphs [4.f\(1\)](#) and [\(2\)](#) do not apply to FLSA overtime pay, which is determined by multiplying the

employee' straight time rate of pay by all overtime hours worked plus one-half times their hourly regular rate of basic pay (including all applicable special rate or locality rate of pay times all overtime hours worked).

- g. **Overtime Work.** Under 5 C.F.R. § 550.103, Overtime work is defined as having the meaning given to the term in 5 C.F.R. § 550.111 and includes irregular or occasional overtime work and regular overtime work.
- (1) For the purposes of flexitime, all hours of work in excess of eight hours in a day or 40 hours in a week which are officially ordered and approved.
  - (2) For the purposes of compressed work schedules:
    - (a) For full-time employees, the term overtime hours refer to officially ordered or approved hours of work performed in excess of the employee's basic work requirement.
    - (b) For part-time employees, overtime hours are those hours of work performed in excess of the basic work requirement for a day (but must be in excess of 8 hours) or for a week (but must be in excess of 40 hours).
- h. **Rate of Basic Pay.** OPM defines Rate of Basic Pay in 5 C.F.R. § 550.103 as the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable locality payment under 5 C.F.R. part 531, subpart F; special rate supplement under 5 C.F.R. part 530, subpart C; retained rate under 5 C.F.R. part 536; or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind.
- i. **Schedule C Employees.** Employees appointed under 5 C.F.R. § 213.3301 to positions that have policy-determining responsibilities or require the employee to serve in a close and confidential working relationship with the Secretary of Veterans Affairs or other key appointed official.
- j. **Tour of Duty.** OPM defines Tour of Duty in 5 C.F.R. § 550.103 as the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.
- k. **Work Unit.** OPM defines Work Unit in the [Handbook on Alternative Work Schedules](#) as an entity located in one place with a specific mission, with homogeneous procedures or technology, and headed by a supervisor or manager authorized to approve time and attendance reports and approve leave.

## 5. RESPONSIBILITIES.

- a. **Executive Director, Corporate Senior Executive Management Office (CSEMO)** shall:
  - (1) Establish policy, in consultation with Compensation and Classification Service, on compensatory time off in lieu of overtime for Schedule C employees.
  - (2) Provide advice and assistance to Administrations and Staff Offices on the procedures in this notice.
- b. **Under Secretaries, Assistant Secretaries, and Other Key Officials** shall:
  - (1) Order and approve irregular or occasional compensatory time in lieu of overtime pay for Schedule C employees and for overtime pay for regular scheduled overtime work for Schedule C employees working under flexible work schedules.
  - (2) Approve compensatory time off in lieu of overtime pay in writing prior to performance of the overtime work.
  - (3) Enter and certify compensatory time off into the VA electronic timekeeping system.
- c. **Managers and Supervisors.** It is essential that managers and supervisors provide sound oversight and guidance to Schedule C employees to meet regulatory requirements while balancing the need to have appropriate fiscal controls. Managers and supervisors shall:
  - (1) Consistently provide the level of oversight and management required to maintain compliance with FLSA and title 5 overtime pay and compensatory time off guidance.
  - (2) Ensure that use of compensatory time off in lieu of overtime pay is applied equitably between career employees and Schedule C employees within the organization.
  - (3) Contact CSEMO with questions or concerns on applying the procedures in this notice.

## 6. REFERENCES.


- a. [5 U.S.C. § 5504, Biweekly pay periods; computation of pay.](#)
- b. [5 U.S.C. § 5542\(a\)\(2\), Overtime rates; computation.](#)
- c. [5 U.S.C. § 5543, Compensatory time off.](#)

- d. [5 U.S.C. § 5547, Limitation on premium pay.](#)
  - e. [5 U.S.C. § 6101, Basic 40-hour workweek; work schedules; regulations.](#)
  - f. [5 U.S.C. § 6121, Definitions.](#)
  - g. [5 C.F.R. § 213.3301, Positions of a confidential or policy-determining nature.](#)
  - h. [5 C.F.R. part 530, subpart C, Special Rate Schedules for Recruitment and Retention.](#)
  - i. [5 C.F.R. part 531, subpart F, Locality-Based Comparability Payments.](#)
  - j. [5 C.F.R. § 536, Grade and Pay Retention.](#)
  - k. [5 C.F.R. § 550.103, Definitions.](#)
  - l. [5 C.F.R. § 550.111, Authorization of overtime pay.](#)
  - m. [5 C.F.R. § 550.114\(g\), Compensatory time off.](#)
  - n. [VA Handbook 5007, Pay Administration, Part V, Additional Pay and Premium Pay, Chapter 2, Overtime and Compensatory Time Off.](#)
  - o. [Office of Personnel Management \(OPM\) Fact Sheet: Overtime Pay, Title 5.](#)
  - p. [Chief Human Capital Officers Council, Fact Sheet: Overtime Pay and Compensatory Time Off for Schedule C Employees \(July 2, 2009\).](#)
  - q. [OPM Fair Labor Standards Act Overview.](#)
  - r. [OPM Fact Sheet: Compensatory Time Off.](#)
  - s. [OPM Fact Sheet: How to Compute FLSA Overtime.](#)
  - t. [OPM Fact Sheet: Flexible Work Schedules.](#)
- 7. RESPONSIBLE OFFICE.** Corporate Senior Executive Management Office (006D).
- 8. RELATED HANDBOOK AND DIRECTIVE.** VA Directive and Handbook 5007, Pay Administration.
- 9. RESCISSION.** This notice will be rescinded when revised VA Handbook 5007 is published within one year.

**CERTIFIED BY:**

/s/  
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**BY DIRECTION OF THE SECRETARY OF  
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