



ETF will invoice the employer for the required contributions plus interest at the effective rate.”

The administration manual explains:

“In cases where the employee decides to bank compensatory time, but later elects to take cash in lieu of the compensatory time, late reported interest may be assessed to the employer per Wis. Stat. § 40.06 (5), since the payment (and hours) must be reported to the year when the hours were worked...

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It is not required that employers institute a broadly applicable policy mandating that employees use any accrued compensatory time or it will be paid out routinely, such as at year’s end, for compensatory pay to be WRS reportable. However, a policy of this nature will eliminate the potential for employers to be subject to late interest assessments that will be due if they must report the payment to a prior year, i.e., when the service was performed, and the payment was earned.”<sup>11</sup>

When setting comp time policies, organizations need to take into account the potential WRS late interest assessments that may incur under these provisions, and the administrative burden of tracking comp time that accumulates year to year and filing prior year adjustments.

## 5. Employers can grant time off for extra hours to exempt employees.

The law does not entitle exempt employees to overtime pay for hours worked over 40 in a work week, nor does a public employer have to grant compensatory time to exempt employees, even if they provide it for non-exempt employees.

Employers can choose to provide exempt staff with time off for working extra hours. It should be called something other than compensatory time to avoid confusion with the comp time policy for non-exempt staff. Often employers refer to it as “personal” or “flex” time for exempt employees.

Employers can structure this benefit in any manner they choose, including for

example, setting it up as a half-hour or an hour off for every hour worked in excess of a set number of weekly hours, which might be some number higher than 40. If the organization formalizes an accrual of personal time for exempt staff, the best practice is to set an annual cap, and structure it as an unpaid “use it or lose it” benefit.

A formal accrual policy, however, is not required. The policy can be as informal as allowing exempt staff to take personal time with the approval of their supervisor.<sup>12</sup>

## Conclusion

Compensatory time can be a cost-effective means of compensating non-exempt employees for overtime work. A written comp time policy should be in place that takes into consideration the factors discussed in this article to ensure it is lawful and workable for the organization.

## Employees 365

1. “Non-exempt employees” are those who are not exempt from overtime pay under the Fair Labor Standards Act. 29 Part 541. These employees are typically paid on an hourly basis and must receive one and a half times their regular rate of pay for hours worked in excess of 40 in a work week. There are different calculations for some police and fire personnel. U.S. Dept. of Labor Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the Fair Labor Standards Act (FLSA).  
2. 29 CFR § 553.20.  
3. 29 CFR § 553.23.

4. *Overtime Final Rule and State and Local Governments*, U.S. Dept. of Labor (2016).  
5. 29 CFR § 553.23(c).  
6. For represented employees, the agreement must be included in the collective bargaining agreement or a memorandum of understanding. 29 U.S.C. § 553.23(b).  
7. 29 CFR § 553.24.  
8. 29 U.S.C. § 553.25.  
9. 29 CFR § 553.27(b).  
10. 29 CFR § 553.27(b).

11. See also Section 504 of the WRS Administration Manual.  
12. See the League’s sample handbook for helpful language: <https://www.lwm-info.org/DocumentCenter/View/4023/SAMPLE-EE-HANDBOOK--FINAL>  
Properly classifying employees as exempt from overtime is crucial. Please see the HR Matters on this subject for guidance: <https://www.lwm-info.org/DocumentCenter/View/3682/HR-Matters-Positions-Exempt-from-Overtime-Under-Federal-Law>

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