

Handbook Highlight from the Montana Municipal Officials Handbook

COMPENSATORY (COMP) TIME

3.905 Compensatory (Comp) Time

Non-exempt Staff. Many municipalities have struggled with the appropriate use of compensatory or "comp" time with its hourly or non-exempt staff. In basic terms, comp time is utilized as an alternative to overtime pay for non-exempt employees. The Fair Labor Standards Act (FLSA) defines compensatory time off as paid time away from the job that is earned and accrued by an employee in lieu of a cash payment for overtime compensation, at the rate of no less than one and one-half hours of compensatory time for each hour of overtime worked. Under the Act, only government agencies may legally allow their non-exempt employees time off in place of wages.

- **Who is Eligible for Overtime?** Under the FLSA and Montana wage and hour law, non-exempt employees must receive overtime pay for all time worked in excess of 40 hours per workweek. Overtime pay must be at least one and one-half times the employee's normal hourly wage rate. Municipalities subject to collective bargaining agreements may have an obligation to pay overtime after eight hours a day if it is specified in the union/employer contract.
- **Too Much of a Good Thing?** Compensatory time in lieu of overtime pay may minimize the immediate costs associated with extended workweeks, but it does not come without risk. It is important that employers consider the maximum liability associated with "banked" compensatory time. Any time on the books is considered compensation at termination – including compensatory time. It is important to not only limit the maximum accrual, but also the maximum time to use the accrued compensatory time to ensure a balanced accrual and use relationship.
- **Do we need a Written Policy?** It is recommended that municipalities establish a written policy that limits the number of comp time hours that can be

accumulated in a fiscal year. If an employee reaches the limit before the end of the fiscal year, the municipality should switch to paying overtime until the comp time balance is reduced. In addition, if an employee is unable to take their comp time by the end of the fiscal year, one solution is for the municipality to pay the employee the amount due at the appropriate one and one-half rate and return the employee's comp time balance back to zero. These steps will help a municipality avoid staff building up thousands of comp time hours over the course of several years. Although an employer may allow an employee to choose between comp time and overtime pay, it is the municipality's obligation to ensure that the non-exempt employee is compensated for all time worked in excess of 40 hours per workweek.

Exempt Staff. Municipalities may also establish a comp time policy for exempt employees, although it is not required under the Fair Labor Standards Act. Some factors municipalities may wish to consider as they design their comp time policy for exempt employees are:

- How many hours will an employee work in a workweek before they are eligible to earn comp time?
- Does the municipality want to limit the total amount of comp time that an employee can accrue at any given time?
- At what rate will employees earn comp time? One hour of comp time for each eligible hour worked?
- The policy should specify that comp time earned by exempt staff has no cash value upon termination or the end of the accrual period.
- At the end of the accrual period, does the municipality want to include a "use it or lose it" clause. An example would be that at the end of the accrual period (possibly fiscal year end), all comp time balances will be returned to zero.

In many cases, exempt staff may work in excess of 40 hours per week. They tend to be management staff, committed to the organization and critical to the organizations' mission. Many municipalities allow these exempt staff to earn and use compensatory time in a more flexible manner than non-exempt staff.

It is a challenge to employers when employees pose the idea that they are misclassified exempt, and were treated as non-exempt, therefore creating overtime and pay obligations for the municipality. It is critical that exempt positions are reviewed and classified exempt with the greatest of caution and are treated exempt in all possible scenarios. Delineating through policy the way the two different categories of employees earn time and use time is one way to ensure differentiation that successfully defends the municipality.

After considering these issues, if the employer elects to allow employees the option to earn comp time, document a compensatory time policy and communicate it to municipal employees. Employers must remember that employees who are subject to union contracts may be subject to different rules and policy implementation processes if specified by a collective bargaining agreement.

LGC special note: Remember, you are not obligated to award comp time to an exempt employee, but you are permitted to offer it and it does not have to be at 1 ½ hours per 1 hour worked (having a policy in place is highly recommended). However, non-exempt employees who work in excess of 40 hours per week **MUST** receive overtime pay or comp time at a rate of no less than 1 1/2 hours of compensatory time for each hour of overtime worked.