

Educational Support Personnel

Compensatory Time-Off ¹

This policy governs the use of compensatory time-off by employees who: (1) are covered by the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §201 et seq., and (2) are not represented by an exclusive bargaining representative.

Employees may be given 1-1/2 hours of compensatory time-off in lieu of cash payment for each hour of overtime worked over 40 hours. Compensatory time must be used within the next pay period in which it is earned and no compensatory time will carry over to the next fiscal year. Maximum Compensatory time accrued is 10 days total. It is the Superintendent's discretion to allow compensatory time to be used beyond the set timeframe listed, if requested. If not used within the required timeframe, it will be paid out in overtime compensation. An employee who has accrued compensatory time-off shall be permitted to use such time in at least half-day components provided such requests do not unduly disrupt the District's operations. The employee's supervisor must approve a request to use compensatory time-off. Upon termination of employment, an employee will be paid for unused compensatory time at the higher of:

1. The average regular rate received by such employee during the last three years of employment; or
2. The final regular rate received by such employee. Compensatory time-off is time during which the employee is not working and is, therefore, not counted as "hours worked" for purposes of overtime compensation.

Implementation

The Superintendent or designee shall implement this policy in accordance with the FLSA. In the event of a conflict between the policy and the FLSA, the latter shall control.

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ The federal regulations implementing the Fair Labor Standards Act (FLSA) governs the use of *comp-time*. 29 C.F.R. §§553.21-553.28 and 553.50. See sample policy 5:35, *Compliance with the Fair Labor Standards Act*, for discussion of the FLSA. In order for a district to offer comp-time, it must have a compensatory time-off policy or the topic must be covered in an applicable collective bargaining agreement. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right. School officials should consult with the board attorney before adopting this policy.

The terms *comp-time* and *compensatory time-off* mean paid time-off that is earned and accrued by a non-exempt employee in lieu of overtime pay for over 40 hours worked in one workweek. Compensatory time-off in lieu of overtime pay must be at the premium rate of 1.5 hours of compensatory time for each hour of overtime worked (just as the monetary rate for overtime is calculated at 1.5 times the regular rate of pay). As a condition for using comp-time in lieu of overtime pay, the employer and employee must have an *agreement or understanding* before the work is performed. Further, the employee's decision to accept comp-time must be made freely. For employees represented by an exclusive bargaining agent, the agreement to use comp-time must be between the district and the bargaining agent.

For non-exempt employees who are not covered by a collective bargaining agreement, the *agreement or understanding* concerning comp-time must be between the district and employee. See sample exhibit 5:310-E, *Agreement to Receive Compensatory Time-Off*. If the district had a regular practice of comp-time before April 15, 1986, that is deemed an agreement. Notice to the non-exempt employees that comp-time will be given in lieu of overtime pay for overtime through bulletin board notices is sufficient to constitute an *agreement or understanding*, provided that the decision to accept compensatory time-off is made freely.

LEGAL REF.: 29 U.S.C. §201 et seq., Fair Labor Standards Act; 29 C.F.R. Part 553.

CROSS REF.: 5:35 (Compliance with the Fair Labor Standards Act), 5:185 (Family and Medical Leave), 5:270 (Employment At-Will, Compensation, and Assignment)