

Overtime Pay and Compensatory Time in Lieu of Overtime Pay / Overtime Pay, Holiday Pay and Compensatory Time in Lieu of Overtime Pay for Hourly Employees as Defined by the Fair Labor Standards Act and the Washington Minimum Wage Act

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PURPOSE

To provide for overtime pay and procedures for the granting and use of compensatory time in lieu of overtime pay in an equitable and fiscally responsible manner by hourly employees of the executive branch who are covered by the overtime pay provisions of the Washington Minimum Wage Act (WMWA) and the federal Fair Labor Standards Act (FLSA). Such hourly employees are statutorily entitled to be compensated for hours worked beyond forty (40) hours in the workweek at one and one-half times their regular hourly rate of pay. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement. Further, hourly employees are subject to the overtime pay provisions as determined by this policy or, if represented, the terms of their applicable collective bargaining agreement, provided those terms are not less beneficial to the hourly employee than the minimum requirements of the FLSA and the WMWA.

POLICY APPLICABILITY

This policy applies to all employees in the executive branch departments, offices, divisions and agencies, including the Assessor's Office and King County Elections. This includes all career service, provisional, temporary, probationary, and appointed employees.

DEFINITIONS

"Bona Fide Executive, Administrative, or Professional Capacity" means those positions determined by the Director of the Department of Human Resources (DHR) to satisfy the applicable "salary basis" test and the "duties" test of the FLSA and the WMWA.

"Compensatory Time" means time off with pay granted in lieu of pay for work performed on an authorized overtime basis at the rate of 1.5 hours for each hour worked in excess of 40 hours in the workweek. Compensatory time is also available for work performed on an authorized straight-time overtime basis at the rate of 1.0 hours for each hour worked in excess of a regular schedule up to and including 40 hours in the workweek. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement.

"Delayed Holiday" means a day off with pay taken in place of an official county holiday on which an hourly employee was required to work.

"FLSA-Exempt Employee" for the purposes of these policies and procedures means an individual designated by the DHR Director, as being employed in a bona fide executive, administrative, or professional capacity, as defined by the FLSA and the WMWA, and who is therefore exempt from the overtime pay and minimum wage requirements of the FLSA and the WMWA.

"Hourly Employee" means an employee who is entitled to be paid for all actual hours that they are required or permitted to work at either the straight-time regular hourly rate for hours worked up to and including forty (40) in the workweek or overtime hourly rate at one and one-half times the

hourly employee's regular rate of pay for each hour worked in excess of forty (40) in the workweek. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement.

- If the hourly employee is represented, the terms of the applicable collective bargaining agreement will govern, provided that the collective bargaining agreement is not less beneficial to the hourly employee than the minimum requirements of the FLSA and the WMWA.
- All Short-Term Temporary (STT) employees are hourly employees regardless of the FLSA classification of the position to which they are assigned.

"Overtime" means hours worked, excluding paid leave hours, in excess of 40 hours in the workweek that is paid at one and one-half times the regular hourly rate of pay. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement.

"Regular Hourly Rate of Pay" means the base hourly rate plus the hourly dollar value of any nondiscretionary premium payments that must be included in the hourly rate when calculating overtime pay for over forty (40) hours of actual work (excluding paid leave hours) in the workweek (e.g., special duty pay, shift differential pay, on call pay, hazardous duty pay, etc.). The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement.

"Regularly Scheduled Work Hours" means the usual hours in a workweek designated by the employer that the employee is expected to work, excluding meal and rest periods.

- No employee shall be required to work more than five consecutive hours without a meal period. Employees working three or more hours longer than a normal workday shall be allowed at least one 30-minute meal period prior to or during the overtime period. Meal periods must be at least 30 minutes in length and must begin no less than two hours or more than five hours from the beginning of the shift.
- Meal periods are not considered hours of work and may always be unpaid as long as employees are completely relieved from duty and receive 30 minutes of uninterrupted mealtime. It is not necessary that an employee be permitted to leave the premises if they are otherwise completely free from duties during the meal period. In such a case, payment of the meal period is not required; however, employees must be completely relieved from duty and free to spend their meal period on the premises as they please.
- Meal periods are considered hours of work when the employer requires employees to remain on duty on the premises or at a prescribed work site *and* requires the employee to act in the interest of the employer. When employees are required to remain on duty on the premises or at a prescribed work site and act in the interest of the county, the county must make every effort to provide employees with an uninterrupted meal period. If the meal period should be interrupted due to the employee's performing a task, upon completion of the task, the meal period will be continued until the employee has received 30 minutes total of mealtime. Time spent performing the task is not considered part of the meal period. The entire meal period must be paid without regard to the number of interruptions.
- Employees shall be allowed a rest period of not less than 15 minutes, on the employer's time, for each 4 hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the 4-hour period. No employee shall be required to work more than three hours without a rest period. Employees may be required to remain on the premises during rest periods. Where the nature of the work allows employees to take intermittent rest periods equivalent to 15 minutes for each four-hour period worked, scheduled rest periods are not required. Employees may not waive their right to a rest period.
- Pursuant to the specific terms of a collective bargaining agreement, rest and meal period requirements may vary or be superseded by the agreement for represented employees.

"Retaliation" means to take adverse employment action against an individual because they have engaged in statutorily protected activity.

"Human Resources Manager" means a person who is responsible for the human resources management practices in executive agencies.

"Straight-Time Overtime" means hours worked in excess of an hourly employee's regular schedule, up to and including 40 hours in the workweek. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement. These hours are paid at the regular hourly rate of pay.

"Workweek" is a fixed and regularly recurring period of 168 hours during seven consecutive twenty-four-hour periods. Unless otherwise designated in writing by the department director or designee, the workweek for an employee paid on the MSA payroll system begins at 12:00 a.m. on Sunday and continues for the next 168 hours through Saturday; and the workweek for an employee paid on the PeopleSoft payroll system begins at 12:00 a.m. on Saturday and continues for the next 168 hours through Friday. The workweek for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement.

POLICY

Work beyond the normal workday or workweek may be required or authorized by the appointing authority or designee where necessary to maintain or perform vital county services.

An hourly employee must obtain authorization to work beyond the normal workday or workweek, in advance of the work being performed, in accordance with departmental policies. An hourly employee is required to submit records of overtime worked in a timely fashion, usually within two business days of working the overtime hours.

Managers and supervisors will take affirmative steps to ensure that hourly employees are not allowed to work outside their regularly scheduled work hours (meal and rest periods, before or after shift, etc.) without authorization and/or compensation for the additional time worked.

Overtime

Pay for work beyond the normal workday or normal workweek shall be at the straight time hourly rate of pay until the hourly employee has actually worked forty (40) hours in the workweek. Pay for hours worked over 40 in the workweek shall be at one and one-half times the hourly employee's regular rate of pay for each hour worked. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement. Paid time off, such as vacation leave, sick leave, bereavement leave, etc., shall not be counted as hours worked for the purpose of determining eligibility for overtime pay or compensatory time.

Compensatory Time

An hourly employee may submit a written request in advance of working overtime to be granted compensatory time off in lieu of receiving overtime pay. Approval of such a request is at the discretion of the hourly employee's division director or designee or as otherwise determined by department policies. The approval must be based on the business needs of the county or department.

- Earning of compensatory time may not be approved for the sole purpose of earning additional paid leave unrelated to the business need of the department.
- Compensatory time may not be earned without prior approval.
- Compensatory time may only be granted pursuant to the applicable provisions of a collective bargaining agreement or for non-represented hourly employees an agreement

or understanding arrived at between the supervisor and the hourly employee before the performance of the work.

- The substitution of compensatory time for overtime pay must be at the hourly employee's request and must be agreed to by the hourly employee and the employer. A supervisor may not impose the requirement on any hourly employee who has not made such a request.

Compensatory time shall be granted in lieu of overtime at the same ratio as would have been used for pay purposes; that is, one and one-half hours for each hour worked over 40 in a workweek. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement.

Compensatory time may not be used before it has been earned and its use has been approved. Use of compensatory time shall be requested in advance by the hourly employee in writing. Requests to use compensatory time must be approved by the supervisor in writing. An hourly employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt the operations of the agency.

The compensatory time balance for an hourly employee shall not exceed 80 hours at any point in time; however, department directors may establish lower limits on the maximum balance of compensatory time.

Compensatory time shall be used during the calendar year in which it is earned unless such utilization is not feasible due to the work demands of the position. If this occurs, the hourly employee may request and the department director or designee may approve the carryover of a maximum of 40 hours of compensatory time. Any approved carryover of compensatory time must be used or paid out in the first quarter of the year.

At the written request of an hourly employee to be paid for any or all earned and unused compensatory time, the department shall promptly pay the hourly employee.

Hourly employees will be paid for all earned and unused compensatory time on the final paycheck in December except for any approved carryover. Hourly employees will be paid for all earned and unused compensatory time upon transfer to another county agency; upon transfer, hire or promotion into an FLSA-exempt position; or upon separation from employment.

Except at separation from employment, all pay for compensatory time shall be at the hourly employee's regular hourly rate of pay in effect at the time of payment.

Upon separation from employment, pay for compensatory time shall be at the hourly employee's regular hourly rate of pay in effect at the time of payment or the average regular rate received during the last three (3) years of employment, whichever is higher.

Holiday Pay

An employee must be eligible for leave benefits and in a pay status on the day prior to and the day following a holiday to be eligible for holiday pay; provided, however, that an employee who has successfully completed at least five years of county service and who retires at the end of a month in which the last regularly scheduled working day is observed as a holiday, shall be eligible for holiday pay if the employee is in a pay status the day before the day observed as a holiday.

One day of holiday pay is 8 hours for hourly employees with a 40 hour workweek, 7 hours for hourly employees with a 35 hour workweek, and pro-rated for employees with part-time schedules (*i.e.*, an employee with a 20 hour workweek who works 4 hours a day, receives 4 hours of holiday pay). Holiday pay will be administered as follows for hourly employees:

- When a holiday lands on an hourly employee's regular day off but because of workload they are required or authorized to work, the employee will be paid for the hours worked and, at the discretion of management, may either be paid for the holiday or the employee may take holiday leave on an hour-for-hour basis at another time that is agreed to by the

supervisor and the employee (a delayed holiday). However, the holiday must be used within 60 days after the official county holiday for which it was earned.

- When a holiday lands on an hourly employee's regular day off and the employee does not work, the employee at the discretion of management, shall take the holiday on the workday immediately preceding or immediately following the regularly scheduled day off or the employee may take holiday leave on an hour-for-hour basis at another time that is agreed to by the supervisor and the employee (a delayed holiday). However, the holiday must be used within 60 days after the official county holiday for which it was earned.
- When a holiday lands on an hourly employee's regular work day and the employee works that day, the employee will be paid for the hours worked and, at the discretion of management, may either be paid for the holiday or the employee may take holiday leave on an hour-for-hour basis at another time that is agreed to by the supervisor and the employee (a delayed holiday). However, the holiday must be used within 60 days after the official county holiday for which it was earned.
 - An hourly employee required to work on a day designated as an official county holiday who receives premium pay under a collective bargaining agreement (*i.e.*, straight time for the normal work day plus additional pay for the holiday) for working the holiday, may not also take the holiday on another day.
- When the holiday lands on an employee's regular workday and the employee does not work that day, the employee is paid the number of hours of holiday pay bo
- If the hourly employee's normal work day is longer than 8 hours, the employee may supplement their holiday leave with accrued vacation leave or accrued compensatory time to equal their pay for a normal work day (*i.e.*, the employee's normal work day is 10 hours so they will receive 8 hours of holiday pay and may supplement 2 hours of vacation leave or accrued compensatory time to get paid 10 hours).

Exceptions and Discrepancies

In the event any provision of this policy conflicts with an applicable provision of a collective bargaining agreement, the latter shall prevail, unless it is less beneficial to the hourly employee than the minimum requirements of the FLSA and/or the WMWA.

When an hourly employee believes that they have not been correctly compensated, the employee must report this to their division director or designee, Human Resources Manager, the DHR Director, the department's lead human resources personnel or designee, as soon as possible. Reports of improper compensation will be promptly investigated. If it is determined that improper compensation has occurred, the division director or designee shall ensure proper compensation is made and will take appropriate steps to ensure future compliance with this policy.

King County does not tolerate retaliation for reporting concerns of alleged violations of this policy. Such action is misconduct in violation of this policy and may be subject to discipline, up to and including termination.

FLSA-exempt employees shall not be eligible to earn compensatory time off nor shall they receive overtime pay. FLSA-exempt employees are compensated on a salary basis and are not eligible for additional pay for hours worked in excess of their general work schedule.

FLSA-exempt employees who have been approved to be temporarily compensated on an hourly basis are hourly employees and shall be paid overtime for all hours worked over 40 in the workweek and are eligible to earn compensatory time in lieu of overtime. The overtime threshold for law enforcement employees shall be established in accordance with 29 U.S.C. §207(k) or as determined by the applicable collective bargaining agreement. These hourly employees are not eligible to be awarded or use Executive Leave during the period in which they are temporarily compensated as hourly employees. When the hourly employee moves back to an FLSA-exempt status, all compensatory time balances will be paid at that time at the regular hourly rate of pay in effect at the time of payment.

An employee whose base classification is paid on an "hourly basis" and who is assigned to work special duty in an FLSA-exempt classification is not eligible to receive executive leave.

This policy does not constitute an express or implied contract. It is a general statement of county policy that cannot form the basis of a private right of action.

PROCEDURES

Working Additional Hours/Earning Compensatory Time

Action By: Hourly employee

Action: Obtains authorization in accordance with this policy and department policy and any applicable collective bargaining agreement prior to performing any work outside regularly scheduled work hours. Submits time sheet reflecting all hours worked, including additional hours worked outside the regularly scheduled work hours, in a timely fashion in accordance with department policy. Submits a written request to division director or designee to allow compensatory time to be granted in lieu of overtime pay prior to performing any work outside regularly scheduled work hours.

Action By: Supervisor

Action: Reviews request for an hourly employee to perform work outside regularly scheduled hours and determines whether it should be approved or denied or forwarded to the appropriate decision maker. Forwards written approval or denial to hourly employee within five (5) workdays from the date the request to perform work outside regularly scheduled hours is received. Reviews request for an hourly employee to be granted compensatory time in lieu of overtime and forwards request with a recommendation to the division director or designee. Takes steps to ensure that hourly employees do not work outside their regularly scheduled work hours without authorization and/or compensation.

Use of Compensatory Time

Action By: Hourly Employee

Action: Submits a written request in advance to supervisor requesting use of compensatory time.

Action By: Supervisor

Action: Reviews request for use of compensatory time; approves or denies request in accordance with this policy or forwards to decision maker. Forwards written approval or denial to hourly employee.

Carryover of Compensatory Time

Action By: Hourly Employee

Action: Uses compensatory time within the calendar year. If unable to do so, submits a written request by December 1st via division director to the department director or designee to carry over up to 40 hours of compensatory time to the next calendar year. Uses any approved carryover of compensatory time by March 31 of the next year.

Action By: Division director or designee

Action: Reviews hourly employee request to carry over compensatory time; forwards request with recommendation to department director or designee. Ensures any approved carryover is used or paid by March 31 of the next year.

Action By: Department director

Action: Reviews hourly employee request to carry over compensatory time to the next calendar year; approves or denies carryover of up to 40 hours; notifies hourly employee.

Action By: Human Resources Division Director

Action: Monitoring proper application of this policy and requiring correction of conduct when actions inconsistent with this policy are discovered.

RESPONSIBILITIES

Hourly employees shall:

- Request authorization to work beyond the normal workday or workweek in accordance with this policy and departmental policies and any applicable collective bargaining agreement;
- Submit time sheets reflecting all hours worked, including those beyond the normal workday or workweek, in a timely manner; including
 - Submitting timesheets reflecting all overtime hours worked usually within two business days of having worked the overtime;
- Request authorization in advance to earn or use compensatory time in conformance with this policy and departmental procedures which implement this policy;
- Request authorization to carry over up to 40 hours compensatory time to the next calendar year by December 1st if it cannot be used within the calendar year earned;
- Schedule and use all approved carryover of compensatory time by March 31 of the next year; and
- Schedule and use, prior to 60 days after the official county holiday, any delayed holidays which are caused due to the requirement to work on a designated county holiday.

Supervisors shall:

- Ensure that hourly employees are paid for all hours worked or are granted compensatory time in accordance with this policy;
- Ensure that hourly employees do not work outside their regularly scheduled work hours without authorization and/or compensation for the additional time worked;
- Approve or deny hourly employee requests to work overtime to ensure compliance with this policy or forward such requests to the decision maker within two business days of receiving such requests;
- Approve or deny hourly employee requests for earning, using, carrying over, or paying compensatory time to ensure compliance with this policy or forward such requests to the decision maker; notify hourly employee of decisions regarding compensatory time requests;
- Forward to division director or designee hourly employee requests for carryover of compensatory time to next calendar year; notify hourly employee of decisions regarding the carryover of compensatory time;
- Promptly investigate and resolve the report of improper compensation and ensure proper payment to the hourly employee if it is determined that improper compensation has occurred; and
- Ensure appropriate steps are taken to ensure future compliance should improper compensation occur.

Division directors or designees shall:

- Ensure that hourly employees are paid for all hours worked or are granted compensatory time in accordance with this policy;
- Ensure that hourly employees do not work outside their regularly scheduled work hours without authorization and/or compensation for the additional time worked;
- Approve or deny hourly employee requests to work overtime in compliance with this policy;
- Approve or deny hourly employee requests for earning, using, carrying over, or paying compensatory time in compliance with this policy; notify hourly employee of decisions regarding compensatory time requests;
- Forward to department director or designee hourly employee requests for carryover of compensatory time to next calendar year; notify hourly employee of decisions regarding the carryover of compensatory time;
- Ensure that hourly employees use or be paid for any approved carryover of compensatory time by March 31 of the next year;

- Designate the supervisor as the person to whom hourly employees should report incorrect compensation and communicate this designation to hourly employees;
- Promptly investigate and resolve the report of improper compensation and ensure proper payment to the hourly employee if it is determined that improper compensation has occurred;
- Ensure appropriate steps are taken to ensure future compliance should improper compensation occur; and
- Designate in writing any parties authorized to act for them in carrying out this policy.

Department directors or designees shall:

- Ensure that managers and supervisors receive training necessary to accurately compensate hourly employees for all hours worked;
- Approve or deny hourly employee requests to carry over up to 40 hours of compensatory time to the next calendar year and notifying hourly employee of decision;
- Ensure that department payroll tracks compensatory time accrual, use and carryover;
- Ensure that compensatory time not approved for carryover is paid at the hourly employee's current regular hourly rate of pay on the final paycheck in December or upon the hourly employee's transfer to another department;
- Ensure that compensatory time is paid for when an hourly employee separates from employment at either the hourly employee's regular hourly rate of pay in effect at the time of payment or the average regular rate received during the last three (3) years of employment, whichever is higher; and
- Designate in writing any parties authorized to act for them in carrying out this policy.

Department payroll personnel shall:

- Ensure that hourly employees are paid in accordance with this policy;
- Record compensatory time accruals and use; and
- Ensure that compensatory time is paid when an hourly employee separates from employment at either the hourly employee's regular hourly rate of pay in effect at the time of payment or the average regular rate received during the last three (3) years of employment, whichever is higher.

Human Resources Managers shall:

- Promptly investigate the report of improper compensation and ensure proper payment to the hourly employee if it is determined that improper compensation has occurred; and
- Ensure appropriate steps are taken to ensure future compliance should improper compensation occur.

The DHR Director shall:

- Review the FLSA status of job classifications on a continuing three-year cycle; and
- Develop an executive summary of this policy to be provided to employees during the New Employee Orientation and to employees who change to an FLSA non-exempt status.

The DHR Division Director responsible for payroll shall:

- Monitor proper application of this policy and require correction of conduct when actions inconsistent with this policy are discovered.

QUESTIONS

Refer questions or comments to your agency's [Human Resources Manager](#) or the Department of Human Resources.