

## OVERTIME AND COMPENSATORY TIME

### I. Introduction

Only non-exempt employees are covered by the overtime liability regulations. A non-exempt employee earns overtime for time worked in excess of 40 hours in a workweek. Exempt employees do not earn overtime.

The Fair Labor Standards Act (FLSA) does not limit the number of hours that an employee can work in a day or in a week. It simply requires that overtime hours be compensated at a rate of not less than one and one-half times the non-exempt employee's regular rate of pay for each hour worked in a workweek in excess of 40 hours per week. For instance, working 9 hours in a regular 8-hour day does not constitute overtime until or unless the 40-hour maximum has been reached. Additionally, overtime liability is not reached until 40 actual hours have been worked in the workweek. This is not the same as "in pay status" which takes into account time off for paid leaves of any sort (i.e., lunch, breaks, College closings, etc.). See part II below for further information.

A special provision authorizes public agencies, e.g. Allegany College of Maryland, to provide compensatory time off in lieu of monetary overtime compensation at a rate of not less than one and one-half hours of compensatory time for each hour of overtime worked, the same calculation used for monetary overtime. ACM has adopted this provision and reserves the right to use compensatory time off in lieu of monetary payment for overtime worked. The agreement to accept compensatory time off for overtime is voluntary, however. This information is fully discussed in part II, below.

### II. Overtime and Compensatory Time

Overtime is the term given to hours worked beyond 40 in one workweek. Overtime hours are compensated either monetarily (pay) or in compensatory time off, both at the one and one-half time rate for each hour over 40.

#### A. Overtime

The granting of overtime is contingent upon an existing need, usually temporary, such as additional workload, special projects or events, or to cover the absence of another employee. Working additional hours for the purpose of receiving additional pay or accruing extra compensatory time off for future use (e.g. to avoid depleting leave reserves) is prohibited and creates an unnecessary fiscal obligation for departments.

Overtime is reached once an employee has worked beyond the 40-hour maximum allowable hours in a given workweek. Compensation for overtime hours must be paid at the one and one-half time rate to non-exempt employees for any hours worked in excess of 40 hours in any given week. The supervisor of the unit is responsible for control of overtime. Overtime, to the extent possible, will be authorized in advance by the responsible supervisor.

#### 1. Overtime Hours.

In determining whether an employee has worked any overtime, only those hours actually worked will

be considered. This is not the same as "in-pay status" which includes all paid leave hours, no matter the type.

An instance of "in-pay status" as opposed to overtime status is the scenario where the number of hours worked is less than or equal to 40, but when added to leave time taken becomes greater than 40. In this case, the extra hours are termed "additional" and are to be paid at the regular rate of pay. To avoid placing an employee into an overtime situation, a supervisor can plan in advance to change the employee's work schedule.

## 2. Overtime Pay.

Payment for overtime worked will be at one and one-half times the employee's regular rate of pay. This rate will not include premium pay for holidays worked or any call-in and callback compensation paid for hours not actually worked.

### **III. Compensatory Time**

Compensatory time is an alternative method of overtime payment for hours worked over 40 for non-exempt employees. As such, it must be approved in advance as overtime. The same overtime principles apply: working extra hours in order to accrue compensatory time off for future use is prohibited.

In lieu of paying a non-exempt employee for overtime worked, employees may be granted compensatory time off at the rate of one and one-half hours off for each hour of overtime worked, at some time after the workweek in which the overtime was worked if the following conditions are met:

- A. The employee knowingly and voluntarily agrees to accept compensatory time, as evidenced by executing a form agreement consistent with Exhibit A to this policy.
- B. The employee is informed that the compensatory time earned may be preserved, used, or cashed out in a manner consistent with the provisions of this policy.

Employees who have requested the use of compensatory time will be permitted to use such time within a reasonable period after making the request if use of the time does not unduly disrupt the operations of the unit. Mere inconvenience to an employer is insufficient reason to deny an employee's request to use compensatory time. The College may opt to pay out all or any portion of compensatory time due an employee at the College's discretion.

If an employee separates, promotes, demotes or transfers, unused compensatory time must be paid out. Additionally, if a non-exempt employee's status changes to exempt, compensatory time must be used or paid out prior to the effective date.

## EXHIBIT A

Compensatory Time Off Agreement

In accordance with the Fair Labor Standards Act, Allegany College of Maryland has a policy of granting employees compensatory time off in lieu of compensation for hours worked in excess of 40 hours a week. A copy of this policy has been provided to me. I understand that the compensatory time off will be granted at time and one-half for all hours worked in excess of 40 hours per week. I further understand that the compensatory time off may be limited, preserved, used or cashed out consistent with the provisions of that policy and applicable law and regulations of the U.S. Department of Labor.

I knowingly agree to the provision of time off as compensation for overtime work as a condition of my employment and consent to the use of compensatory time off in accordance with the policy. I further understand that in the event any portion of the policy is interpreted to conflict with the FLSA or its regulations, that the conflicting portion shall be struck, and the remainder of the policy shall continue in full force and effect.

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Employee Signature

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Date