

May 11, 2017

Comp Time, Overtime, What's Up with That?

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You've probably heard by now that the U.S. House of Representatives last week [passed a new law](#) that allows private employers to offer employees comp time in lieu of [overtime pay](#). That law has not yet been passed in the U.S. Senate but what if it is? How will it impact your compensation plan? Will you be ready for what could be a game changer in how employees are compensated for working overtime?



Last year a proposed increase in the salary threshold for exemption from overtime was a topic of much discussion among Human Resource (HR) professionals and employment law attorneys alike. Amid much brouhaha, it was prevented from being implemented and, though the Department of Labor (DOL) appealed the injunction against it, implementation has been stalled by the court system. So, why bring up this old news now?

It isn't much of a stretch to tie the stagnant overtime regulations to the new comp time law currently working its way through the legislative process. Implementation of either of these political hot potatoes could have a dramatic impact on your compensation plan, not to mention your payroll budget.

The Details

By definition, compensatory time is paid time off granted to an employee for working extra hours. The federal government's Office of Personnel Management (OPM) [indicates](#) that one hour of compensatory time off is granted for each hour of overtime worked. Not everyone, however, views comp time the same as the OPM. For example, [Inc.com defines](#) it as one and a half hours of paid time off for each hour of overtime worked.



The good news for employees is that the House's new bill indicates one and a half hours of comp time would be required for each hour of overtime worked at a private employer's place of business. Also, opting to use comp time instead of receiving overtime pay would be voluntary for employees and must be agreed upon in advance and affirmed in writing.

Additionally, agreeing to use comp time in lieu of overtime by employees could not be a condition of employment. To be eligible, the employee must have worked at least 1,000 hours during the previous 12-months. There are other requirements in the House's bill including a maximum number of comp time hours (160) and a payout for earned but unused comp time at year-end or termination of employment.

Things to Consider

Whether employees would view comp time as a benefit or as a pay reduction is anybody's guess. Employees that value having the time off to spend with friends and family might think it's the neatest thing since sliced bread, other employees might feel they're being cheated out of overtime pay and want the extra cash. Given the House's bill would make the use of comp time voluntary for employees, however, resolves that dilemma by allowing employees to be selective as to whether they use it.

Comp time has been a given for public employers for a long time and seems to work quite well within that arena. But for private, profit driven employers would it help or hinder? Fortunately, offering use of comp time per the House's bill would be voluntary for employers as well. It remains to be seen, however, whether a Senate bill will keep that feature.

How difficult would it be for supervisors, particularly in a large manufacturing or service environment, to manage the comp time process? Would it be a burden for them to keep track of which employees want overtime pay versus which want comp time? Would they favor employees who'll work the overtime hours over employees who opt to use comp time, or vice versa?

Would offering comp time in lieu of overtime adversely impact an organization's productivity? Suppose you needed all hands on deck to get a big order out the door on a Saturday so employees were needed to work that day, resulting in overtime. Would it be worth the extra cost in overtime pay to meet the customer's deadline for shipment? What if your employees all wanted comp time instead and opting to take the following Monday off? Would that put a serious crimp in your productivity for that week? Would it necessitate overtime the following Saturday to make up for the work time lost on Monday?

Would employees be allowed to pick and choose when they use comp time? In other words, could they opt to use comp time some weeks and pocket the overtime pay at other times? Obviously, there is a lot to think about before offering employees comp time as an alternative to overtime pay. Until Congress passes a final law, however, it's all just speculation. Even so, it doesn't hurt to start thinking about the potential pros and cons.



The Not So New Overtime Regulations—A Brief History

- May 2016—New overtime regulations finalized with December 1, 2016 effective date.
- November 2016—Overtime rule temporarily blocked by district court in Texas.
- December 2016—Multiple states and business groups sue for an injunction against the new overtime rule, the injunction is appealed by the DOL, and labor groups attempt to save the new overtime regulations.
- January 2017—District court moves forward, not waiting for appeals court ruling.
- March 2017—Appeals court grants Trump administration until May 1, 2017 to take a position on new overtime regulations.
- April 2017—Third extension granted to Trump’s DOL to address overtime rule by June 30, 2017

What Now?

If you’re like most HR professionals, you’re in limbo, waiting to see if the new overtime regulations survive and if a comp time law for private employers is passed in the Senate. In the meantime, a little “what if” planning might be helpful.

At minimum, give a heads up to your finance department manager that a comp time option may be a reality. That would allow them the time to construct financial models for comp time versus overtime before your organization is faced with making a decision on whether to offer it to employees.

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