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New Compensatory Time Off for Travel Provision and New Time Limit for Use of Compensatory Time Off

A Mandatory Reference for
ADS Chapter 472

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This reference provides policy guidance on the new compensatory time off for travel benefit provided by the Federal Workforce Flexibility Act of 2004 (Public Law 108-411, October 30, 2004). Employees and their supervisors are advised to review this guidance carefully before requesting, approving, and using compensatory time off for travel performed outside of regular duty hours.

In addition, this policy implements another important change with respect to the time limit for use of compensatory time off earned for authorized overtime work. The new policy extends the time limit that employees may carry over earned compensatory time off before the unused hours are either forfeited or converted to payment at the applicable overtime rate.

1. New Compensatory Time off for Travel Provision

Section 203 of the Federal Workforce Flexibility Act of 2004 authorized a new form of compensatory time off for time spent by an employee in an official travel status, away from the employee's official duty station, when such time is not otherwise compensable for pay under another statute.

The U.S. Office of Personnel Management (OPM) recently issued interim regulations in 5 CFR Part 550, subpart N, making this new form of compensatory time off for time in a travel status effective on January 28, 2005. After a public comment period, OPM will issue final regulations that may affect the administration of this new employee benefit.

The following are interim guidelines to implement and administer this new form of compensatory time off. These guidelines may be revised at a later date. OHR/PPIM will notify employees of any future changes.

a. Coverage

The new provision covers General Schedule, Administratively Determined (AD), and noncommissioned (untenured) Foreign Service employees who are paid at the GS-15/FS-1 level and below. These employees may request compensatory time off for official travel performed outside of regular duty hours, in accordance with the new law (5 U.S.C. 5550b). Employees are eligible for the new benefit, regardless of whether they are exempt from, or covered by, the overtime provisions of the Fair Labor Standards Act of 1938, as amended.

Commissioned (tenured) FS Officers (FSOs) who are paid at FS-1 level and below may also request compensatory time off for official travel outside of regular duty hours to be administered under section 3 FAM 3133.5, covering special compensatory time off. Although commissioned FSOs are excluded from the premium pay provisions of Title 5, U.S.C. Chapter 55, subchapter V, the Agency, in consultation with the Department of State, has determined that, as a matter of administrative discretion, the authority in section 412 of the Foreign Service Act of 1980, as amended, may be used to provide a similar benefit to FSOs.

While the premium pay statute in 5 U.S.C. Chapter 55, subchapter V, does not apply to U.S. Personal Services Contractors (USPSCs), it is Agency policy that USPSCs may use compensatory time off on the same basis as do U.S. direct hire employees.

Senior Executive Service (SES) and Senior Foreign Service (SFS) employees are excluded by law (5 U.S.C. 5541) from coverage and are not eligible for compensatory time off for official travel performed outside of regular duty hours. Senior USAID employees who are paid above the rate for GS-15/Step 10 are also excluded.

Foreign Service National Direct Hires and Foreign Service National Personal Services Contractors are paid under Local Compensation Plans and are not covered by the compensatory time off for travel provision (P.L. 108-411). However, OHR is working with the Department of State to implement a similar benefit for FSN employees. Employees will be informed of future developments.

b. Effective Date

The Agency policy is effective as of January 28, 2005, when the interim regulations on this new provision went into effect. Under the new rules, eligible employees who perform officially authorized travel on or after January 28, 2005, may be credited with compensatory time off for time in a travel status to which they are entitled under the regulations and the Agency's implementing policies/procedures. If an employee is on an extended period of officially authorized travel as of January 28, 2005, only the qualifying travel hours occurring on or after January 28, 2005, may be credited to earn the new compensatory time off.

c. Responsibilities

Supervisors are responsible for managing when their employees travel. Supervisors should schedule official travel whenever possible, during the employee's regular duty hours. Supervisors must approve their employees' requests for crediting hours of compensatory time and ensure that earned compensatory time off is scheduled and used by the employee to avoid forfeiture.

Employees are responsible for tracking their earned compensatory time off as well as for requesting, scheduling, and using earned compensatory time off for travel in accordance with these procedures. Timekeepers are responsible for reporting hours of earned compensatory time off in the AETA timekeeping system, upon supervisory approval of the employee's written request. Timekeepers are also responsible for retaining the employee's request for credit of earned compensatory time off and all supporting documents with the employee's time and attendance records.

d. Limitations

To qualify, the travel must be officially authorized for work purposes and approved by an authorized Agency official or otherwise authorized in accordance with established Agency travel policies/procedures.

This benefit only applies to temporary duty travel between an official duty station and a temporary duty station or between two temporary duty stations. This includes travel in connection with an employee's required attendance at conferences and training sites located outside the limits of his/her official duty station. Permanent change of duty station (PCS) and leave-related travel, including home leave, medevac, visitation, and R&R, are examples of travel that do not qualify for this benefit.

In some cases, TDY may be authorized in conjunction with home leave or another kind of travel that does not qualify the employee for compensatory time off. Here is an example.

An employee on home leave/return to post orders travels from post to USAID/W for three days of consultations en route to his/her home leave point. After taking home leave, the employee returns to post. Because the employee was authorized to travel from post to USAID/W for three days of consultations at USAID/W rather than going directly to his/her home leave point, the employee is eligible to earn compensatory time off for travel from his/her post of assignment to USAID/W, the temporary duty location (if the travel occurs outside of regular working hours and the time is not otherwise compensable).

There would be no entitlement to compensatory time off for the time spent traveling from the TDY location to the home leave point or from the home leave point to the post of assignment.

An employee earns compensatory time off for travel for qualifying time spent in a travel status away from his/her official duty station when such hours are not otherwise compensable for pay under another statute. Compensable periods of time mean periods of time that are creditable as hours of work for the purpose of determining a specific pay entitlement. Hours of travel are not creditable if they are compensated by basic pay or under other premium pay provisions, even if there are compensation caps that limit the payment of premium pay for those hours.

For example, employees may not earn compensatory time off for traveling on a holiday during their regular working hours because they are entitled to only their rate of basic pay for those (non-overtime) holiday hours. Similarly, employees who have a regularly scheduled workweek of Sunday through Thursday may not earn compensatory time off for travel on a Sunday during their regular working hours because they are entitled to only their rate of basic pay for those hours.

There is no limitation on the amount of compensatory time off for travel an employee may earn.

Compensatory time off for travel is not considered in applying the biweekly or annual premium pay limitations under 5 U.S.C. 5547 or the aggregate limitation on pay under 5 U.S.C. 5307.

e. Travel Status

Time in a travel status includes:

- * Time spent traveling between the official duty station and a temporary duty station;
- * Time spent traveling between two temporary duty stations; and
- * The usual waiting time that precedes or interrupts such travel.

The Agency has determined that an employee may claim no more than 90 minutes before flight departure for domestic travel and no more than two hours for international travel.

- * Time spent at an airport waiting for a connecting flight (e.g., one or two hours) to continue traveling to a temporary duty station also is creditable time in a travel status, subject to exclusions for bona fide meal periods.

An extended waiting period, i.e., an unusually long wait during which the employee is free to rest, sleep, or otherwise use the time for his/her purposes, is not considered time in a travel status.

Once an employee arrives at the temporary duty station (i.e., TDY work site, training site, or hotel at the temporary duty station), the employee is no longer considered to be in a travel status. Any time spent at a temporary duty station between arrival and departure cannot be credited as time in a travel status for the purpose of earning compensatory time off.

f. Commuting Time

Creditable travel time includes the following.

- * Travel time outside of regular working hours between an employee's home and a TDY location or transportation terminal (e.g., airport or train station) outside the limits of the employee's official duty station. However, the employee's normal home-to-work/work-to-home commuting travel time is deducted from the creditable travel time.
- * Travel time outside of regular working hours between a worksite and a transportation terminal.

Travel outside of regular working hours to or from a transportation terminal within the limits of the employee's official duty station is equivalent to commuting time; therefore, it is not creditable travel time.

g. Crediting Compensatory Time Off

Employees must request credit for compensatory time off in writing to their supervisor no later than 30 days after issuance of this Notice, or upon completion of their qualifying official travel, whichever is later. They must attach appropriate documentation to support their request. OHR plans to modify Form AID 430-3, Overtime Authorization and Report, to facilitate the processing of these requests.

Currently, employees must prepare a written request by memorandum or e-mail with lines for approval, signature, and date for their supervisor's approval/disapproval. Upon approval, the supervisor will forward the employee's written request to the responsible timekeeper for recording the earned compensatory time off in the AETA timekeeping system. The timekeeper will also retain the request with the employee's other time and attendance documents.

Compensatory time off for travel is a separate category of compensatory time off. It is reported, accrued, and used separately from compensatory time off that is authorized for overtime work. Compensatory time off for travel is credited and used in increments of one-tenth of an hour (6 minutes).

Timekeepers must enter the number of hours and minutes of compensatory time off in accordance with instructions in the AETA manual. (Pertinent instructions are posted on the pay administration webpage of the OHR website located at: http://inside.usaid.gov/M/HR/pay_admin.htm.) For example, 8 hours and 15 minutes of compensatory time off would be entered in AETA as "8.3 CW."

h. Scheduling and Use of Accrued Compensatory Time Off

Employees must request permission from their supervisor to schedule the use of their accrued compensatory time off for travel. In requesting use of compensatory time off, employees must follow the normal procedures used in requesting and scheduling leave. Employees must complete OPM Form 71, Request for Leave or Approved Absence, to schedule their accrued compensatory time off.

Employees are responsible for scheduling use of their accrued annual leave and compensatory time off throughout the leave year to avoid forfeiture. If employees have not taken their excess annual leave by the end of the leave year, they forfeit their unused annual leave. This does not constitute an exigency of the public business, and therefore, is not a basis for restoring the forfeited annual leave.

An employee must have prior approval from his/her supervisor to use accrued compensatory time off, paid leave, or a combination of both, during periods of official

travel. The employee is responsible for additional costs (e.g., per diem) in extending his/her travel status for personal convenience.

i. Forfeiture of Unused Compensatory Time Off

Compensatory time off for travel is forfeited if:

- * It is not used within 26 pay periods after it is was credited;
- * The employee voluntarily transfers to another agency (including a promotion or change to lower grade);
- * The employee moves to a position in the same or another agency that is not covered by the compensatory time off for travel provision (e.g., promotion to SFS or SES position, movement to a position in the U.S. Postal Service, etc.); or
- * The employee separates from the Federal Government, except as noted below.

Unused compensatory time off for travel will not be forfeited but will be held in abeyance for an employee who separates, or is placed on leave without pay status, and later returns following:

- * Separation or leave without pay to perform duties in the uniformed services and a return to serve through the re-employment right; or
- * Separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

When the employee returns to duty, the responsible timekeeper will reinstate the employee's accrued compensatory time off. The employee must use all of the compensatory time off held in abeyance by the end of the 26th pay period following the pay period in which the employee returns to duty, or forfeit the compensatory time off.

j. Prohibition Against Payment for Unused Compensatory Time Off

By law (5 U.S.C. 5550b(b)), an employee may not receive payment under any circumstances for any unused compensatory time off for travel.

k. Additional Information

OPM has also provided guidance to assist agencies in implementation of this new provision. This guidance includes a Q&A (Attachment 1) and some examples that illustrate how much compensatory time off an employee is entitled to earn for time spent in a travel status (Attachment 2). Access these attachments from the Pay Administration webpage of the OHR website located at:
http://inside.usaid.gov/M/HR/pay_admin.htm.

2. New Time Limit for Use of Compensatory Time Off for Overtime Work

The Agency is implementing another important change to extend the time limit that employees have to use their accrued compensatory time off for authorized overtime work. Effective Pay Period 2 (January 23, 2005--February 5, 2005), employees must use their compensatory time off by the 26th pay period after it was earned. Otherwise, it will either be forfeited or payment will be made for the unused hours at the applicable overtime rate. (Hourly overtime pay rates are posted with the 2005 GS and FS salary tables on the Pay Administration webpage of the OHR website.)

Previously, the Agency required employees not covered by the Fair Labor Standards Act to use earned compensatory time off within eight pay periods (16-week time limit) or forfeit the compensatory time off. If the employee requested the compensatory time off but was not given the opportunity to take the time off by the end of the 16-week period, the unused hours of compensatory time off were liquidated by payment at the applicable overtime rate.

The new 26-pay period time limit will give employees more time to use their accumulated compensatory time off for overtime work and will be consistent with the time limit for use of compensatory time off for travel. In addition, the 26-pay period time limit will conform to one of OPM's proposed changes to standardize payroll processes Government-wide. It will provide a consistent time period during which Federal employees may use compensatory time off.

Employees must schedule any earned compensatory time off in writing by submitting Form OPM-71, Request for Leave or Approved Absence, to their supervisor for approval. Supervisors are responsible for ensuring that all compensatory time off requested by employees is granted and taken within 26 pay periods (52 weeks) following the pay period in which it was earned.

Compensatory time off remaining to the credit of the employee by the end of the 26th pay period in which it was earned will be forfeited, if the employee has not requested to use it prior to that date. The employee will receive payment for the unused hours of compensatory time off upon expiration of the 26th pay period, if failure to use the time off is due to an exigency of the service beyond the employee's control.