State of Wisconsin

DOA – DIVISION OF PERSONNEL MANAGEMENT

- CLASSIFICATION AND COMPENSATION BULLETIN -

Date: November 6, 2025	**Subject:** Compensatory Time for State Employees
Locator No: DPM-0650-CC/POL	

The purpose of this bulletin is to provide guidance on the application of the Fair Labor Standards Act (FLSA) as it pertains to the use and payout of compensatory time following the passage of 2025 Wisconsin Act 15. Agencies are reminded to refer to Wisconsin Human Resources Handbook Chapter 520 Fair Labor Standards Act (FLSA) ("WHRH Chapter 520") for additional guidance, though if this bulletin contradicts WHRH Chapter 520 then this bulletin supersedes that document. The guidance in this bulletin will remain in effect until rescinded or modified.

BACKGROUND INFORMATION

On July 3, 2025, 2025 Wisconsin Act 15 (State Budget Bill) was enacted and published. Section 318 of 2025 Wisconsin 15 created a new provision at s. 230.125, Wis. Stats., effective January 1, 2026, which reads "**Cash payment for compensatory time off prohibited.** Except as prohibited by federal law, accrued compensatory time cannot be paid in cash."

The 2023-2025 Compensation Plan, like Plans from prior years, requires under Section A-4.03(3)(b), that agencies pay out compensatory time unused by October 31 in November of that year at the employee's current "regular rate." To comply with state law, DPM has proposed in the 2025-2027 Compensation Plan to strike the current Compensation Plan provision. However, the 2023-2025 provision will remain in effect and agencies must pay out overtime per the 2023-2025 Compensation Plan until either: 1) the Joint Committee on Employment Relations approves the proposed change in the 2025-2027 Compensation Plan, or 2) until January 1, 2026, when s. 230.125, Wis. Stats., will supersede the Plan.

Use of "compensatory time" or "compensatory time off" is a special provision of the Fair Labor Standards Act and detailed under 29 C.F.R. Part 553 which authorizes certain public employers, including State government, to provide compensatory time off at a rate of not less than one and one-half hours for each hour of work in lieu of premium overtime for hours worked over 40 by employees who are not exempt from the FLSA. Additional information can be found in *WHRH* Chapter 520.

POLICY GUIDANCE FOR STATE AGENCIES

Compensatory time is, at its most basic definition, an alternative payment of premium overtime to assist public employers with managing their budget by awarding leave time *in lieu of* paying premium overtime wages. However, compensatory time is also, essentially, *deferred wages* and must be paid out in accordance with the FLSA if employees do not use the payment as leave.

This change to state law will necessitate that state agencies evaluate their policy and practice in regard to the use of compensatory time in lieu of payment of premium overtime and to ensure compliance with this policy bulletin. Use of "compensatory time" or "compensatory time off" is a special provision for certain public agencies, including State of Wisconsin Executive Branch agencies, but requires that both employer and employee have entered into an "agreement or understanding" (in accordance with the FLSA and in accordance with WHRH Chapter 520, Sec. 520.070.2.a) before the work is performed. Employees must knowingly and voluntarily agree to receive compensatory time in lieu of overtime payment and any decision they make must be made freely and without coercion or pressure. In the absence of a collective bargaining agreement that covers the topic, neither side may compel the other to require an employee to receive compensatory time in lieu of paying it out as overtime (though the employer could choose not to offer overtime unless an employee agreed to compensatory time in lieu of payment, though in this instance the overtime must be voluntary). However, once an employee has earned compensatory time then agencies are bound by the requirements of this policy bulletin.

Note: Agencies should take special care in agreeing to let an employee earn compensatory time instead of paying out cash overtime. The FLSA regulations require that an employee, eventually, be paid out at either the employee's "current regular rate" or "an average of the "regular rate" received during the previous three years of employment (See Section IV, of this bulletin, below). Once compensatory time is earned at an agency, the agency cannot liquidate that compensatory time until the employee leaves the agency. Therefore, it is possible that an employee who accrues, but does not use, compensatory time could be paid out at a much higher salary rate than when the compensatory time was earned, especially if the employee were to transfer or promote to different positions within the same agency while maintaining a compensatory time balance with no mechanism to pay it out until the employee leaves the agency.

At the time of the publication of this bulletin the Department of Employee Trust Funds requires that employers paying out compensatory time must credit, for WRS reporting purposes, liquidated compensatory time earnings to the same year, or years, in which it was earned; this means agencies will be required to pay all necessary interest/fees associated with making prior year WRS contribution adjustments. The rate used to calculate these payments will be the rate indicated in this bulletin.

Agencies may provide further limits or restrictions through agency policies or practices on how and when employees may earn compensatory time within their agencies, but at no time can exceed or waive the requirements of this bulletin.

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Section I – Max Accrual of Compensatory Time, including roll-over requirements.

A. Accrual of Compensatory Time.

Generally, compensatory time is earned in lieu of premium overtime payment at a rate of 1.5 hours earned for every hour worked as detailed in Sec. 520.070 of WHRH Chapter 520. As a reminder, LTEs cannot earn compensatory time (in accordance with Section D-4.03 of the Compensation Plan).

B. Accrual Limits.

Accrual limits are dictated by rules and requirements of the FLSA and associated regulations. Employees covered by this bulletin will be limited to no more than 240 hours of compensatory time credits. While the FSLA does permit higher accrual limits for certain types of employees (i.e., "public safety employees"), the State's payroll system will permit employees to accumulate a maximum balance of 240 hours of compensatory time credit. See Sec. 520.070.2.b of WHRH Chapter 520 for more information on accrual limits of Compensatory Time credits, as well as for the definition of "public safety employees."

C. Rolling Over Compensatory Time Between Calendar Years.

Compensatory time is not an earned leave credit under ER 18, Wis. Adm. Code. Therefore, it is <u>not</u> subject to carry-over limitations under ER 18.02, Wis. Adm. Code, or *Wisconsin Human Resources Handbook* Chapter 716 Annual Leave/Holiday Benefits. Compensatory time credits can exist indefinitely, until used by the employee or the conditions of Section III of this bulletin are met.

D. Exceeding Maximum Accrual Limits.

Agencies are not permitted to exceed maximum accrual limits; doing so is a violation of federal law. Therefore, agencies must either 1) pay out any excess over 240 hours of compensatory time earned immediately, or 2) offer only premium overtime payments to employees who have reached accrual maximums.

Section II – Use of Compensatory Time.

A. **Employee Use of Compensatory Time**

As per WHRH Chapter 520, Sec. 520.070.2.d(1), "An employee who has accumulated FLSA-related compensatory time credits and requested use of this compensatory time, must be permitted to use such credits within a 'reasonable period' after making the request, if such use does not 'unduly disrupt' the operations of the agency. An agency may not refuse an employee's request to use FLSA-related compensatory time credits unless the agency anticipates that it will not be able to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services."

With the passage of 2025 Wisconsin Act 15, agencies must take care to ensure employees can use compensatory time since they are prohibited from liquidating those credits as per state law, except as detailed in this bulletin.

B. Credits cannot be optionally liquidated.

Sec. 520.070.2.d(2) of WHRH Chapter 520 is superseded by this bulletin. Agencies may **not** liquidate compensatory time off credits **except** as detailed in Section III of this bulletin.

Section III – Pay on Transfer and Separation from State Service

A. **Transferring, Promoting, or Demoting, to a New Position**

1. **Within the Same Agency**

If an employee of a state agency is transferred, promoted, or demoted, to another position in the same agency, employees keep all compensatory time credits. Agencies **cannot** liquidate (i.e., pay) earned compensatory time because the employee is being retained with the same employer.

2. **To a Different Agency**

If an employee transfers, demotes, or promotes to a new position at a different state agency (and no joint-employment relationship exists with the gaining agency, see. Sec. 520.100.3 of WHRH Chapter 520), agencies shall treat the employee that is moving to a different state agency as if the employee were separating from state service (See Sec. III.B), solely as it pertains to liquidating compensatory credits, and issue payment in accordance with Section IV of this bulletin.

B. **Separating from State Service (or movement to UW System, Legislature, Judicial Branch)**

1. **Termination of State Service.**

Upon termination from state service, unused compensatory time credits must be liquidated and payment made to the separating employee. See Sec. 520.070.2.d(4) of WHRH 520. Compensatory time earned for overtime cannot be used to extend termination leave and must be paid out (see III.B.3, below).

2. **Employee Movement to a Non-Executive Branch Agency**.

Compensatory time is a not a benefit, it is a credit earned in lieu of a cash payment. Therefore, compensatory time leave credits cannot be transferred to a different state entity like other leave benefits are sometimes transferred (e.g., sick leave balances). If an employee moves to a different state employer, all compensatory time leave credits must be liquidated and payment made to the employee in accordance with Section IV of this bulletin.

3. **Compensatory Time Leave Credits cannot be Used to Extend State Service**

   In accordance with ER 21, Wis. Adm. Code, Compensatory time off **cannot** be used to extend an employee's separation date from state service on resignation (or retirement). Instead, compensatory time off must be liquidated and paid to the employee on resignation (or retirement). (Note, "holiday compensatory time" is a different type of compensatory time, with different rules and requirements. Unlike with normal compensatory, "holiday compensatory time" can be used to extend state service on separation.)

C. **Project Appointments**

1. **Permanent Appointment to a Project Position**

   An employee who is given a permanent appointment to a project position is considered a permanent employee and compensatory time will be administered in accordance with A., and B., above.

2. **Project Appointment to a Project Position**

   An employee who is given a project appointment whose project appointment ends at one agency and is appointed to a new project or permanent appointment at the same or different agency will be treated as a separation solely as it pertains to liquidating compensatory credits, and issue payment in accordance with Section IV of this bulletin. (see Section III.B, above). A project position is a temporary employee in a temporary position and such an employee has no entitlement to further employment derived from the project appointment itself.

Section IV – Rate Used on Payment.

A. **Rate to be Used on Separation**

1. **Non-Exempt Employees:**

   As indicated Sec. 520.070.2.d(4) of WHRH Chapter 520, employees who have compensatory time leave credits liquidated and paid out must be paid out at the higher of either: 1) the final regular rate received, or 2) the average regular rate received during the last three years of continuous employment with the agency. Note, terms such as "regular rate" has special meaning under the FLSA and associated regulations. Direct questions to the contacts at the end of this bulletin.

   Note: The phrase "last three years of continuous employment" means the three-year period immediately prior to the date of termination/separation.

2. **Exempt Employees:**

Employees who are exempt who have compensatory time leave credits liquidated shall be paid out at their current rate.

Section V – Multiple Appointments.

A. **Within the Same Agency**

Under the Fair Labor Standards Act, an employee has a single FLSA categorization at an agency, with limited exceptions regardless of the number or type of positions the employee holds, without regard to location in the agency, appropriation, or budget. Agencies should refer to WHRH Chapter 520.100 for more information and should be aware that compensatory time leave credits (or payment on separation) could affect different parts of their agencies in different ways.

B. **At Two, or More, Agencies.**

For purposes under the Fair Labor Standards Act, Wisconsin state agencies are treated as separate and distinct employers. Therefore, wages – or compensatory time leave credits – earned at one agency will not affect regular rate calculations at a different agency, unless a joint employment situation exists. See WHRH Chapter 520.100 for more information.

QUESTIONS:

Questions regarding the information included in this bulletin should be directed to Peter Flood by phone at (608) 266-8149 or by e-mail at Peter.Flood@wisconsin.gov; or, Amanda Eischen by phone at (608) 266-1729 or by email at Amanda.Eischen@wisconsin.gov.

Questions regarding payment on transfer and separations regarding *payroll processing* should be directed to DOA Central Payroll: Dennis Dissmore at (608) 266-8431.

Signed by:

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Rachel Martin, Director
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