

Department of Health and Mental Hygiene

"COMPENSATORY LEAVE" FOR CASH OVERTIME EMPLOYEES

October 27, 1998

The purpose of this document is to provide information to DHMH employers, supervisors, timekeepers and employees regarding the handling of compensatory leave for cash overtime eligible employees. Employers are to ensure that this document is provided to employees prior to their working of overtime hours resulting in the earning of compensatory leave as discussed below.

Approval By The Employer:

If approved by the employer, cash overtime eligible employees may elect to earn compensatory leave instead of receiving cash payment as compensation for overtime hours worked. The employer is defined to be each facility CEO (appointing authority), each local health department health officer (appointing authority) and each headquarters administration program director. Employers may elect to approve this overtime payment option on a individual case-by-case basis in Headquarters or for specific groups of employees in Facilities and Local Health Departments.

Notice By The Employee:

With proper notice, cash overtime eligible employees may elect on a pay period basis to receive compensatory leave in lieu of cash overtime. Proper notice is defined as providing two to three days' advance notice prior to the beginning of a pay period. This notice is to include the period of time which the employee wishes any overtime worked to be counted as earned compensatory leave. In like manner, the employee is to provide at least two to three days' advance notice prior to the beginning of the pay period when the employee desires to resume receiving cash overtime payment for overtime hours worked.

Rate Of Earnings:

If the employee works up to and including 40 hours in a pay week, then the rate of earnings is one hour for each overtime hour worked. The rate of earnings is one and one-half hours of compensatory leave for overtime hours worked over 40 hours in a pay week. These compensatory leave hours remain available for the employee to use as long as the employee is employed with the State.

Cash overtime eligible employees are permitted to accrue up to 240 hours (160 hours worked times one and a half) of compensatory leave, after which time cash payment must be made for any additional overtime hours worked. Payment for unused compensatory leave hours occurs under one of the following conditions: when the leave is taken; the employer determines to pay the employee for the unused leave hours; the employee requests payment for unused leave hours;

or upon termination of the employee.

Overtime Eligible Compensatory Leave Records:

Presently, the DHMH automated timekeeping system does not accept the earning and/or use of overtime eligible compensatory leave. For DHMH Units who use this or any other system not properly treating or unable to accept overtime eligible compensatory leave, the procedures outlined below apply.

1. DHMH form 566, Sign-in/Sign-out, is to be used as the authorization document to work the overtime eligible compensatory leave hours and for recording the dates, the times, and the overtime hours worked counting as compensatory leave hours earned.
2. The time-in and time-out times for the entire time on duty for the work day recorded in item 1 are to be recorded on the DHMH timesheet (DHMH-858), Employee Time Status Report.
3. The employee is to record compensatory leave taken as time worked in the regular hours column on the employee's timesheet and, if necessary, combine it with any regular hours worked for that day. In the **Remarks** column of the timesheet line for that day, the employee is to write the notation: "USED ## HOURS COMP TIME", where ## is the number of hours taken.
4. Employers are to maintain a written record of the overtime eligible compensatory leave earnings and hours taken for each employee approved for this option of payment.

Since the employer is responsible for maintaining all records regarding the employee's overtime eligible compensatory leave, the Personnel Services Administration will refer DHMH and State auditors to the employee's unit timekeeper as the liaison for reviewing all of the above documentation at the employer's location.

Usage Of Overtime Eligible Compensatory Leave:

Employees are to request this leave in advance via leave card; supervisors should approve this request in accordance with the unit's policy for approving leave. Supervisors may disapprove a request to use this leave only when the employee's time off will unduly disrupt the operations of the unit.

Payment Upon Termination:

The employer is to provide written notice to their payroll unit that a terminating employee is to be paid for unused overtime eligible compensatory leave. This notice is to include the number of

hours of unused compensatory leave, and the employee's social security number, name, and DHMH agency code. The notice is to contain an original signature of the employee's program director or deputy.

Payment for unused compensatory leave shall be made to the employee at the higher of :

- ▶ the final regular rate of pay of the employee
- ▶ the final average regular rate of pay received by the employee during the last three years of employment

Additional Information:

1. According to §553.27 of the Code of Federal Regulations, payment in cash for all or a portion of the employee's unused compensatory leave may be made at any time at the option of either the employer or the employee. Payment under these circumstances shall be made at the regular rate of pay currently being earned by the employee.

When payment is elected, the employer is to provide the information indicated in the previous section in writing to their payroll office.

2. When an overtime eligible employee transfers to another employer, whether within DHMH or outside DHMH, the employer is to provide the employee's new employer with the number of unused compensatory leave hours remaining.
3. The employer may not force an employee to schedule and use overtime eligible compensatory leave that has been accrued. The compensatory leave is the employee's property and for the most part is usable when the employee chooses.
4. The employer may require that the employee use overtime eligible compensatory leave in lieu of annual leave when the employee has requested annual leave and the employee is not in danger of losing unused annual leave at the end of the calendar year.
5. When an overtime eligible employee is reclassified to a compensatory time eligible classification, the employer is to pay the employee for any remaining unused overtime eligible compensatory leave hours. The rate of compensation paid under this circumstance is the employee's rate of pay in effect prior to the reclassification to the compensatory time eligible classification.