



County Technical Assistance Service

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Use of Comp Time

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Use of Comp Time

Reference Number: CTAS-995

Comp time cannot be used as a means of avoiding statutory overtime pay. An employee has the right to use accrued comp time, and must not be coerced to accept more comp time than an employer can realistically and in good faith expect to be able to grant within a reasonable period of a request for use of such time. An employee must be permitted to use accrued comp time within a reasonable period after making the request, as long as it does not unduly disrupt the workplace.^[1]

What is a reasonable period will be determined by considering the customary work practices based on case by case facts and circumstances, including:

1. Normal work schedule,
2. Anticipated peak workloads based on past experience,
3. Emergency requirements for staff and services, and
4. Availability of a qualified substitute staff.

To the extent the conditions are contained in an agreement or understanding, such can interpret what constitutes a “reasonable period.”

Being unduly disruptive means more than mere inconvenience to the employer. The employer, in order to turn down a comp time request made within a reasonable period of time, must reasonably and in good faith anticipate that it would impose an unreasonable burden on the employer’s ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee’s services.

Also, the employer may require employees to use their compensatory time. The U. S. Supreme Court has determined that the FLSA does not prohibit the practice of forcing employees to use accrued comp time.^[2]

In a workweek or work period during which an employee works overtime hours for which cash overtime payment will be made, and the employee also takes compensatory time off, the payment for such comp time may be excluded from the employee’s regular rate of pay for overtime purposes.^[3]

[1] 29 C.F.R. § 553.25. The Sixth Circuit Court of Appeals has held that having to pay other employees overtime in order to allow someone to take banked comp time does not cause an “undue disruption” unless the parties have entered into an express agreement, such as a collective bargaining agreement, which allows financial considerations to be used to deny the use of comp time. *Beck v. City of Cleveland*, 390 F.3d 912 (6th Cir. 2004).

[2] *Christensen v. Harris County*, 529 U. S. 576, 120 S.Ct. 1655 (2000).

[3] 29 C.F.R. § 553.26(c).

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