Important Issues for Public Sector Payroll

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COMPENSATORY TIME

Basics
State and local government employers may provide nonexempt employees with compensatory time off as a substitute for paying overtime
Basics

Granted to nonexempt employees working > 40 hours in a workweek

Compensatory time

Basics

Granted in place of paying overtime

Conditions

* Provided at 1½ hours for each hour of overtime worked
Basics

Conditions

- Employees represented under a collective bargaining agreement must have compensatory time as part of the agreement

- Employees not represented under a collective bargaining agreement must have an understanding about compensatory time before the compensatory time is granted

Accural Limited

Public safety, emergency response, or seasonal activities

- May not accrue more than 480 hours
- 320 hours of overtime
Accural Limited

All other employees

- May not accrue more than 240 hours
- 160 hours of overtime

Accural Limited

When performing public safety activities, emergency response activities, or seasonal activities must have more than occasional duties

Accural Limited

Office employees performing public safety activities or emergency response in emergencies will not be allowed the 480-hour limit
Accural Limited

Seasonal activities
- Work periods of increased demand

Seasonal activities
- That are regularly recurring

Seasonal activities
- The projected overtime will cause the accumulated compensatory time

> 240 hours
Accural Limited

Seasonal activities are not limited to those that are susceptible to weather

Accural Limited

- Seasonal activities = processing tax returns
- Short periods of intense activity are not seasonal

Using Comp Time

Request to use comp time must be granted within a “reasonable period of time” unless it is “unduly disruptive”
Using Comp Time

When determining a reasonable period of time, consider the facts and circumstances of each case.

Mere inconvenience is not basis for denying use.

U.S. Supreme Court ruled
- Can compel use of comp time.
May Opt to Pay Overtime

Government employers may opt to pay overtime instead of granting comp time.

Paid at Termination

Unused compensatory time must be paid at the employee’s termination.

Paid at Termination

Rate at which unused compensatory time is paid must be not less than:
- Average rate received during the last three years, or
- Final regular rate of pay received.
DOL Guidance
Use of compensatory time to pay nonexempt employees for hours worked between 37½ and 40 in a week

Compensatory time

DOL Guidance
Non-overtime weeks
• If meeting minimum wage
  • May provide 2½ hours comp time
  • Is not required to provide comp time

Compensatory time

DOL Guidance
Overtime weeks
• If meeting minimum wage
  • Must be paid for all hours worked up to 40
  • May be provided comp time for hours worked > 40
Special Exemption

Exempt from 7 day work week
- If employed on work period basis
- Work periods are > 7 days but ≤ 28 days

Special Exemption

Work periods are not required to coincide with duty cycles or pay period

Special Exemption

No requirements when the work period must start
Special Exemption

A defined work period remains fixed

Special Exemption

A work period may be changed
- Changing work periods must not be intended to evade overtime

Special Exemption

Separate work periods may be defined for groups or specific employees
### Special Exemption

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<th>Work Periods (days)</th>
<th>Fire Protection Maximum Hours</th>
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**Employees working > maximum hours for work period, FLSA overtime rules apply**
Occasional/Sporadic Employment

- Work for the same government organization in a different capacity
- Defined as occasional or sporadic

Occasional/Sporadic Employment

- Hours from both positions are not combined
- When deciding if the hours worked exceed 40 in the workweek

Occasional/Sporadic Employment

Work assignments must not be in the same general occupational category as the employee's regular work
Occasional/Sporadic Employment

Decision to partake in the assignments must be made freely and without coercion

Compensable Activities

Substitution

- Two individuals employed in the same occupation by the same government
- May agree to substitute for one another
- With the approval of the organization

Substitution

When substitution occurs, the hours worked substituting for another employee are excluded from the overtime
Substitution

- Each employee must be free to decline to substitute
- Government organization is not required to keep records of the substitute hours

Volunteer Employment

Volunteer Activities School District Employees

Wage and Hour Opinion Letter
- Individuals are volunteers when they
  - Perform services for civic, charitable, or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered
Volunteer Activities School District Employees

Wage and Hour Opinion Letter

- Individuals are volunteers when they
  - Can either receive no compensation or be paid expenses or a nominal fee

Volunteer Activities School District Employees

Wage and Hour Opinion Letter

- Individuals are volunteers when they
  - Offer their services freely
  - Are not employed by the same public agency to perform the same services for which they volunteer

Whether the services are the same services they are employed to perform depends upon the facts and circumstances
Volunteer Activities School District Employees

Use the Dictionary of Occupational Titles – online.onetcenter.org

CLOTHING
UNIFORMS
DONNING/DOFFING

Time Spent Changing Clothes

Changing clothes is worktime if changing clothes is integral and indispensable
Time Spent Changing Clothes

Time spent donning basic "nonunique" protective gear is not compensable.

Compensable Activities

Time Spent Changing Clothes

Police officers changing in and out of uniforms
  - Courts are split

Donning/Doffing
  ≠ Compensable
Donning/Doffing ≠ Compensable

- Police officers in uniform at start of shift
  - Home or Police Station?
  - City sued

Donning/Doffing ≠ Compensable

Court ruled
- Donning/doffing time not compensable!

Uniforms
Are they taxable?

Excluded from income
**Uniforms**

**Are they taxable?**

Excluded from income
- Must be worn as a condition of your employment

Excluded from income
- They are not suitable for everyday wear

It is not enough that the clothing be distinctive
Uniforms

Are they taxable?

The clothing must not be suitable for regular clothing

Workers that may have the cost and upkeep of work clothes excluded from income

Delivery workers
Workers that may have the cost and upkeep of work clothes excluded from income

- Firefighters

- Health care workers

- Law enforcement officers
Workers that may have the cost and upkeep of work clothes excluded from income:
- Letter carriers

Painter’s clothing that is not distinctive:
- White cap

Are they taxable?
Uniforms
Are they taxable?

Painter's clothing that is not distinctive
- Blue shirt
- White jacket
- White bib overalls

Are they taxable?
Uniforms

Are they taxable?

- Painter’s clothing that is not distinctive
- Standard work shoes

- Protective clothing can be excluded from income

- Safety shoes or boots
Uniforms

Are they taxable?

Protective clothing
- Safety glasses

Uniforms

Are they taxable?

Protective clothing
- Hard hats

Uniforms

Are they taxable?

Protective clothing
- Work gloves
Workers who may be required to wear safety items

- Carpenters

- Electricians

- Machinists

Uniforms: Are they taxable?
Workers who may be required to wear safety items

- Truck drivers

Uniforms

Are they taxable?

Uniforms

IRS Rules!

Working condition fringe benefits

- Issued to police officers & firefighters

Uniforms

IRS Rules!

Working condition fringe benefits

- Suitable for ordinary wear
Working condition fringe benefits

- Employer restrictions on off-duty wear

IRS Rules!

- Uniforms
  - With department insignia

- Restricting off-duty wear

IRS Rules!
Working condition fringe benefits
- Not suitable for ordinary wear

Uniforms
IRS Rules!
- Procedural change

Uniforms
IRS Rules!

Uniforms
Are they taxable?
- Uniform Allowances
- Advance
Uniform Allowances

- Reimbursement

Are they taxable?

Uniforms

- Amount paid is not wages

- Condition of employment
Uniforms
Are they taxable?

Uniform Allowances
- Amount paid is not wages
  - Cannot be worn as street clothes

Uniforms
Are they taxable?

Uniform Allowances
- Amount paid is not wages
  - Employee must return any excess amounts advanced

VEHICLE USE?
Business-related purposes = No income

All other use = Income

Exceptions
- De minimis fringe benefit
Exceptions

- Qualified nonpersonal use vehicle

Vehicles

What are qualified nonpersonal use vehicles?

- Clearly marked police vehicles

- Clearly marked fire vehicles
What are qualified nonpersonal use vehicles?

Ambulances

Vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds

Bucket trucks ("cherry pickers")
What are qualified nonpersonal use vehicles?

Delivery trucks with seating only for the driver

What are qualified nonpersonal use vehicles?

Dump trucks

What are qualified nonpersonal use vehicles?

Passenger buses
What are qualified nonpersonal use vehicles?

- Qualified specialized utility repair trucks
- School buses
- Unmarked vehicles used by law enforcement officers
What are qualified nonpersonal use vehicles?

Unmarked vehicles used by law enforcement officers
- Substantiation requirements do not apply to officially authorized uses

Employee must account to the employer for the business use
Vehicles
Accounting for vehicle use

Substantiating the usage

- Mileage

- Time and place of the travel
Accounting for vehicle use

Substantiating the usage
- Business purpose of the travel

Option
- Treat all employee use as personal use

Recordkeeping
- Maintain adequate records
Employee should log the business use of the vehicle for each trip.

If the employee's business or personal mileage is the same for each period during a year, adequate records kept during one period can be used to project totals.
Avoid substantiation requirements

- Enforcing a written policy against personal use of vehicles
- Considering all employee use of the vehicles as personal use
THANK YOU FOR ATTENDING!!!!!