

# Comp me! Comp time and you - or not

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**Compensatory time is a beautiful thing** ... but you may not be able to use it or grant it. And if you do, you could be setting yourself - and your company - up for major trouble.

## What is Comp-time?

According to the [Office of Personnel Management site](#), comp time is:

*"Time off with pay in lieu of overtime pay for irregular or occasional overtime work,*

*or*

*When permitted under agency flexible work schedule programs, time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work."*

## KEY PHRASE: Agency

All employers are not eligible to offer compensatory time, only government agencies *as in actual government offices*, not companies that simply do business under or have a government contract. Federal, state, county, city, township, village...as long as a payroll is defined as a government payroll, compensatory time *may be granted if* the agency has a *defined flexible work schedule program*.

## *But I Own My Own Business! (or ...I'm a Doctor ...I'm a Real Estate Broker!)*

*Uncle Sam doesn't really care* - at least, not in this instance. All businesses - private, public; small, large; government, utility, railroad - you name the employer iteration - must follow the payroll rules outlined in the [Fair Labor Standards Act of 1938 \(FLSA\)](#).

Under the current rules, which were updated as recently as the first administration in the second Bush era, all positions that do not meet the overtime exemption rule (see later blog for definitions and explanations) are to be paid at no less than the prevailing minimum wage for up to 40 work hours in a seven-day period. *Any time worked over 40 hours in a seven-day period must be paid at one-and-a-half times the employee's regular hourly wage.*

**KEY PHRASES: Any, 40 hours**

"Any work," is defined as anything done to benefit the employer, whether or not the activity is described within a person's job description.

Let's say you're an employer and you hold mandatory employee meetings of any kind every Wednesday during the lunch hour. You buy everyone pizza and have drinks available for everyone, but you don't pay them for the lunch hour. Are you violating FLSA?

Oh yeah.

The meeting, any meeting, especially any kind of meeting, party, whatever, you make mandatory is considered "work suffered" under FLSA and is compensable at the same rate as regular "work suffered." If that meeting time adds an extra hour to the 40 everyone has already put in during your policy-defined work-week, then you owe all your non-exempt staff time-and-one-half pay for that extra hour.

Let's say your office needs to be painted, but you don't have painters budgeted for this year and you ask for volunteers to help you paint over the weekend. You'll provide the food and soft drinks, they need only come dressed to get dirty. Do you owe these "volunteers" time-and-one-half?

You bet you do: though the work is done on the weekend, it's still work, and under FLSA, it's work "suffered" for the benefit of the company. Do you owe overtime for both Saturday and Sunday?

Maybe not: Whether you owe overtime for both days depends upon how your policy book defines your work-week. If your work-week is defined as Monday through Sunday, then, yes, you would owe two days' worth of overtime. If your work-week is defined as Sunday through Saturday, then you would only owe overtime for Saturday, but still owe regular wages for Sunday.

***But I can't afford to pay overtime***

Again, I say: Uncle Sam doesn't care; and let me just add: tough. The rules are clear. They've been around for a long time. You have the Internet. As a fully-grown human, capable of owning a business - or at least running a business - you are expected to have done your "due diligence."

In other words, the OFCCP, DoL, or any other investigating agency will not accept excuses for what you didn't know you should know. *(I know this, because my first HR job was with an employer who was audited by the OFCCP--two weeks after I started--and let's just say my predecessors were all let go for good reason).*

***Is there a way I can get around this rule?***

Of course - sort of.

The best way to "get around" this rule is to **work within the rule**. If you know you must have weekly meetings, the first thing you need to do is hold the same meeting at least twice and stagger the attendants. The next thing you need to do is allow an hour off during the *same seven-day work period* as the meeting. You'll accomplish a couple different things:

1. You won't have to shut down your office for the meeting.
2. You won't have to pay overtime.

### **KEY PHRASE: Seven-day work-period**

Notice I've never denoted a *pay-period*. I've always described a seven-day period, and this is because FLSA dictates seven days.

*If you want to grant a form of comp-time, it must be done the same week during which the extra activity occurs.* Technically, this is not comp-time as defined by FLSA, so I always advise not to refer to this time off as "comp-time." If you're ever audited by the government, employees are interviewed, and their phrasing can get you into trouble, so save yourself at the start and take my advice: don't call this time off "comp-time."

### ***What if I break the rules?***

Well, it'll cost you, regardless your intent. According to the DoL site, the penalties are:

"Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a **civil money penalty** of up to \$1,000 for each such violation.

Willful violations of the FLSA may result in **criminal** prosecution and the violator fined up to \$10,000. A second conviction may result in imprisonment."

Yikes!

The audit process is not fun, though I guarantee you'll learn A LOT. I know I did. If you're interested, take a look at [the process on the DoL site](#). It is every bit as grueling as it reads.

Trust me on this one: If you're starting a business, **learn the rules and follow them**. Teach *everyone* the rules and their rights and responsibilities, even if everyone is staff.

If you've already started your business and you know you are in violation in some way, change what you're doing NOW. Note when you learned what you were supposed to do. Note each phase of your correction. Note when the total correction is in place.

Keep these notes in a special notebook along with your new policy, any training material and training proof. Never lose a shred of this notebook and make certain it's the first thing you hand an auditor if, by any chance, you get audited.

***What's the chance of an audit?***

Well, from what I've been able to find, the DoL has hired 500 new auditors to keep up with all the new businesses starting up. When I contacted my local federal DoL auditor, she told me that it may take years for her to get to a business, but once she's there, she'll return every two years for the life of the company; because rules change and people generally cannot keep up with every change. The government always needs money, and fines are a wonderful way to generate some extra cash.

If you have questions on this topic or have a new topic you'd like me to explore, let me know. Just remember, ***I am not an attorney***, just a very good researcher who happens to have loads of experience in this particular area.

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