



## ***Memo***

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To: Board of Directors  
From: Jordan Dietz, General Manager  
Date: June 15, 2021  
Subject: Compensatory Time Policy Review

The Crestline Village Water District staff is made up of both hourly and salaried employees. All District employees are eligible to receive compensatory and paid time off benefits, and the Board is seeking a review and possible update to policy.

Included are excerpts from the current Personnel Manual that address these leave types, as well as legal references for the Board to review.

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## **Excerpt from Personnel Manual, Page 5.**

### **Overtime Compensation**

Because the needs of the District's public are of paramount importance, it is recognized that overtime work may, on occasion, be required of any employee. When possible, advance notification of these mandatory assignments will be provided. Overtime work must generally receive prior authorization by the General Manager or his designated representative. Approval for overtime work involving emergency calls and necessary system maintenance in the field must be obtained on the following normal work day. Overtime assignments will be distributed as equitably as practical to all employees qualified to perform the required work. Hours worked and paid holiday time in excess of 40 hours per week, or hours worked on a paid holiday shall be paid at the rate of time and one-half (1.5 times the normal rate). In addition, Employees assigned to a 5-day per week, 8-hour per day schedule are paid overtime for hours worked in excess of 8 per day. Employees assigned to a 9/80 schedule are paid overtime for hours worked in excess of 9 on their 9-hour day and paid overtime for hours worked in excess of 8 per day on their 8-hour day. Paid time off ("PTO") and accrued compensatory time off hours are not considered hours worked. Only employees who are defined as non-exempt under the federal wage and hour laws will be eligible for overtime pay (the General Manager, Office Manager, Field Supervisor are exempt and not eligible for overtime).

Failure to work scheduled overtime or overtime worked without prior authorization from the General Manager or his designated representative may result in disciplinary action, up to and including possible discharge.

### **Compensatory Time Off**

In lieu of cash payment for overtime worked, an employee, with the General Manager's or his designated representative's prior approval, may accrue compensatory time off at the rate of time and one-half. All supervisory employees who are defined as exempt under the federal wage and hour laws may accrue compensatory time off for any worked time in excess of 8 hours per day, 40 hours per week, or on a paid holiday at the rate of straight time. (Supervisory Employees assigned to a 9/80 schedule will only receive compensatory time off for hours worked in excess of 9 per day on the day they are scheduled 9 hours.) The maximum accrual of compensatory time off is 80 hours at the end of any pay period. Any hours in excess of the maximum accrual will be automatically paid to the employee.

The employee must schedule the use of accrued compensatory time off with his/her supervisor. Employees will be granted the time off unless it would be an undue hardship on the District.

**Taken from Department Of Labor, (<https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa>)**

**Salary** - The regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the salary.

**Taken from Department Of Labor, (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs7.pdf>)**

Compensatory Time: Under certain prescribed conditions, employees of State or local government agencies may receive compensatory time off, at a rate of not less than one and one-half hours for each overtime hour worked, instead of cash overtime pay. Law enforcement, fire protection, and emergency response personnel and employees engaged in seasonal activities may accrue up to 480 hours of comp time; all other state and local government employees may accrue up to 240 hours. An employee must be permitted to use compensatory time on the date requested unless doing so would “unduly disrupt” the operations of the agency.

### **FLSA Exempt Employees and Compensatory Time**

By definition of their exempt status, an exempt employee may work any number of hours in a single workweek and not receive overtime pay. Because of this, many employers don't extend compensatory time to exempt workers when they work unusual amounts during a workweek -- their job description is created to avoid overtime or compensatory time. Employers who provide compensatory time to exempt employees as a reward for extended hours don't place employees' exempt status at risk, as 29 C.F.R. §553.28 allows employers to provide exempt workers with additional benefits beyond FLSA-mandated salaries without altering their FLSA status.

## **29 CFR 553.21**

Section 7(o) provides as follows:

(o)

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only -

(A) Pursuant to -

(i) Applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) In the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) If the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)

(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an [employee](#) for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the [employee](#) at the time the [employee](#) receives such payment.

(4) An [employee](#) who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than -

(A) The average regular rate received by such [employee](#) during the last 3 years of the [employee's](#) employment, or

(B) The final regular rate received by such [employee](#), whichever is higher.

(5) An [employee](#) of a [public agency](#) which is a [State](#), political subdivision of a [State](#), or an interstate governmental [agency](#) -

(A) Who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) Who has requested the use of such compensatory time, shall be permitted by the [employee's](#) [employer](#) to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the [public agency](#).

(6) For purposes of this subsection -

(A) The term overtime compensation means the compensation required by subsection (a), and

(B) The terms compensatory time and compensatory time off means hours during which an [employee](#) is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the [employee](#) is compensated at the [employee's](#) regular rate.