



DEPARTMENT OF PUBLIC SAFETY
INTRA-DEPARTMENTAL CORRESPONDENCE



DATE: April 5, 2017
FROM: Scott Weaver, Secretary
TO: DPS Employees
SUBJECT: DIRECTIVE 2017-02 Compensatory Time Balances – All Employees; Overtime for FLSA Exempt Employees

This Directive replaces Directive 2016-04, which is hereby rescinded.

The following directive provides the current policy and procedure on the banking of compensatory balances resulting from working overtime. In addition, direction is given on the procedure for obtaining approval for Fair Labor Standards Act (FLSA) exempt employees to be compensated for hours in excess of 80 per pay period.

Most DPS employees are designated as FLSA non-exempt employees under the FLSA. Non-exempt employees are entitled to be compensated at a rate of 1.5 times their regular rate of pay for hours worked in excess of 40 hours per pay period (non-commissioned employees) or 83 per pay period (patrol officers and sergeants).

FLSA exempt employees are those employees who typically are in manager or high level supervisor/technical positions and, for commissioned law enforcement officers, Lieutenants and above. These employees are *not* entitled to any additional compensation under the law for hours worked in excess of 80 hours in a pay period.

If you are unsure whether you are FLSA exempt or non-exempt please contact the Human Resources Bureau.

Limit on compensatory balances: No DPS employee, other than New Mexico State Police recruits, may carry a compensatory time balance of over 40 hours. This limitation applies to both FLSA exempt and non-exempt employees. The 40 hour limitation applies to the *total* of an employee's premium bank (SHARE code PREMBANKOT), straight time compensatory bank (SHARE code COMPTIME), holiday accrued (SHARE code HOLIDAYACC), and holiday compensatory time (SHARE code HOLIDAYCMP). Compensatory time balances are located on each employee's SHARE timesheet.

Use of compensatory balances and administrative compensatory time: When taking leave, whether annual or sick leave, employees must utilize compensatory balances (SHARE codes COMPTIME, ADMINCOMP, STANDBY, PREMBANKOT, HOLIDAYCMP, HOLIDAYACC) *prior to* using VACATION leave balances. The single exception to this direction is during the months of November and December when employees must use annual leave to keep VACATION balances at the 240 hour limit at the end of the calendar year or risk losing hours in excess of 240 (pay period beginning in December and *ending* in January of each calendar year).

FLSA exempt employee overtime compensation: As stated above, FLSA exempt employees are not entitled to overtime under the FLSA. However, overtime, whether paid or in the form of compensatory time, *may* be provided at management's discretion.

Banked compensatory time for FLSA exempt employees will be provided only for special projects and or circumstances when specifically pre-approved in writing by their supervisor, up to the 40 hour compensatory time balance cap.

Paid overtime for FLSA exempt non-commissioned employees will be provided only when sufficient budget exists and only for special projects and/or circumstances when specifically pre-approved in writing by the Cabinet Secretary (individually or via a directive).

Paid overtime for FLSA exempt commissioned officers (Lieutenants and above) will be provided only when sufficient budget exists, inclusive of grant-funded projects, and only for special projects and/or circumstances specifically pre-approved by their supervisor.

Payment of compensatory time upon separation: Administrative compensatory time will not be paid upon separation from the Department. FLSA non-exempt employees will be paid for other compensatory leave balances upon separation.

Compensatory time will not be paid when a FLSA exempt employee separates from the Department. However, the Secretary may approve in writing payment of up to 40 hours of compensatory time to FLSA exempt employees who have compensatory time balances and have also contributed significant amounts of unclaimed overtime to ensure Departmental operational needs were met.

Please contact the Human Resources Bureau if you have any questions regarding this directive.