



Overtime and Compensatory Time

Updated: October 2019





Federal and State Law

- **Fair Labor Standards Act (FLSA):** Requires that employees are paid overtime for work in excess of forty (40) hours in a week.
- **California Labor Code § 514:** Requires that employees are paid overtime for work in excess of eight (8) hours in a day; while the City and County of San Francisco is not covered by this law because our employees are covered under collective bargaining agreements, we have negotiated that our employees receive this benefit.



MOU Overtime – 1x v. 1.5x

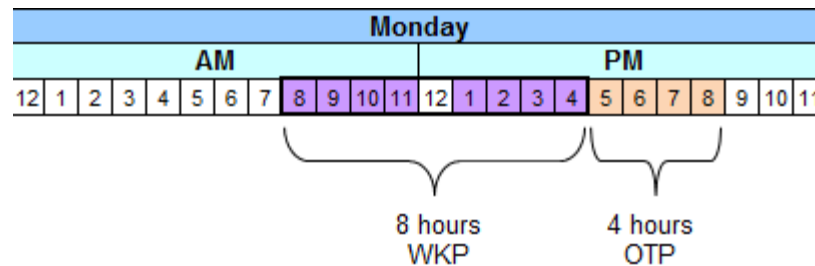
- **One-And-One-Half-Time (1.5x) Overtime ('OTP'):** Earned for hours worked in excess of 8 in a day or 40 hours in a week.
- **Straight-Time (1x) Overtime ('OST'):** Earned for hours worked outside an employee's regular work schedule where an employee has not yet worked more than 8 hours in a day or 40 in a week under an MOU based on calculating overtime on hours worked (not hours paid).



MOU Overtime – 1x v. 1.5x

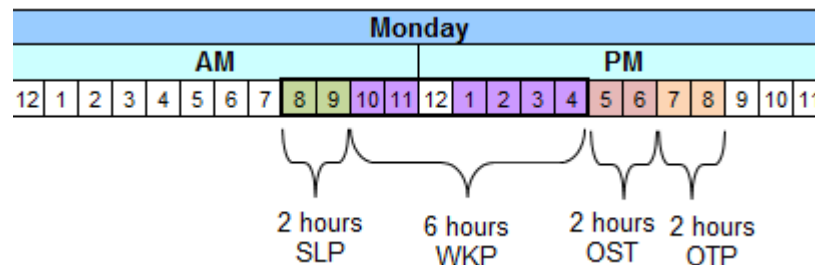
Example 1:

Employee works their regular work schedule from 8:00am to 5:00pm with one hour unpaid lunch and then works four additional hours of overtime. All four hours are earned at the 1.5x overtime rate.



Example 2:

Same employee takes off two hours of paid sick leave at the beginning of their regular work schedule and then works the remaining six hours of their regular shift. The employee then works four additional hours of overtime of which two are at the 1x rate and two are at the 1.5x overtime rate.





MOU Overtime – Calculations

Most of the City's MOUs calculate overtime solely based upon regular hours worked ('WKP') and Legal Holiday Pay ('LHP'; including in-lieu legal holidays) with the following exceptions:

- Based on all hours paid with the exception of paid sick leave:
 - Craft Coalition
 - Electricians, Local 6
 - Laborers, Local 261
 - Painters
 - Plumbers, Local 38
 - District Attorney Investigators

- All Hours worked outside of regular work schedule earned at overtime rate:
 - Oper. Eng., Local 3
 - Stationary Engineers, Local 39



MOU Overtime – Calculations

MOU	LHP	FHP	VAP	CTP	SLP
Auto. Mach., L1414 ¹	x				
Build. Inspec.	x				
Craft Coalition	x	x	x	x	
Electricians, L6	x	x	x	x	
Laborers, L261	x	x	x	x	
Oper. Eng., L3	x	x	x	x	x
Painters ¹	x	x	x	x	
Plumbers, L38	x	x	x	x	
Stat. Eng., L39	x	x	x	x	x
TWU, L200	x				
TWU, L250-A, Auto.	x				
IFPTE, L21	x				
Team. L856, Misc.	x				
TWU, L250-A, Multi.	x				
MAA	x				
MEA Misc.	x				
SEIU Misc.	x				
SEIU Nurses	x				
Sup. Nurses	x				
UAPD	x				
DA Invest. Assoc. (DAIA)	x	x	x	x	
Dep. Prob. Off. (DPOA)	x				
Deputy Sheriffs (DSA)	x				
IPOA	x				
MSA	x				
Sup. Prob. Off.	x				

x – paid leave hours included in overtime calculations

LHP = Legal Holiday Pay, FHP = Floating Holiday Pay, VAP = Vacation Pay, CTP = Comp Time Pay, SLP = Sick Leave Pay

¹ Sick Pay look back provision



FLSA Overtime

- In addition to MOU overtime, employees in non-Z eligible positions may receive FLSA overtime ('OTF') which is paid at FLSA regular rate of pay.
- FLSA regular rate of pay is automatically calculated in the Payroll System.



Work Week

- **Starts:** Saturday, midnight
- **Ends:** Through Friday, 11:59 p.m.

* Unless officially declared otherwise

Week One							Week Two						
Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri
-	-	8	8	8	8	8	8	-	8	8	8	8	8
		WKP	WKP	WKP	WKP	WKP	OST		WKP	WKP	WKP	WKP	SLP

In the first example, the overtime performed on Saturday is at straight-time ('OST') since the paid sick leave ('SLP') was taken in the same work week.

Week One							Week Two						
Sat	Sun	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Mon	Tues	Wed	Thur	Fri
-	-	8	8	8	8	8	8	-	8	8	8	8	8
		WKP	WKP	WKP	WKP	SLP	OTP		WKP	WKP	WKP	WKP	WKP

In the second example, the overtime performed on Saturday is at one-and-one-half-time ('OTP') since the paid sick leave ('SLP') was taken in the previous work week.

Paid leave generally does not count toward overtime calculations. However, this varies greatly by MOU so imperative to check before making these calculations.



Alternative Work Schedules

- Employees working alternative work schedules do not receive daily or weekly overtime until they work in excess of their normal work schedules (e.g., an employee working a 4/10 only earns daily overtime for work in excess of 10 hours in a day)
 - 4/10: Four 10 hour shifts in a week.
 - 9/80: Eight 9 hour shifts and one 8 hour shift in a pay period.



As-Needed Employees

- Since as-needed employees do not have a regular work schedule, they are only eligible for one-and-one-half-time (1.5x) overtime ('OTP') once they work more than 40 hours in a week (i.e., they are not eligible for daily overtime).



Compensatory Time Off

- **Non-‘Z’ Symbol (hourly) employees (FLSA “non-exempt”):** Pursuant to the terms of an employee’s MOU, an employee may elect compensatory time off in lieu of paid overtime. Electing compensatory time in lieu of paid overtime means foregoing all pay associated with the overtime hours worked including premiums. This compensatory time must be cashed out upon separation.
- **‘Z’-Symbol (salaried) employees (FLSA “exempt”):** Pursuant to the terms of an employee’s MOU, an employee otherwise not eligible for paid overtime may earn compensatory time off. This compensatory time cannot be cashed out.

The ‘Z’ Symbol status of a classification can be obtained from the classification database: <http://sfdhr.org/classification-and-compensation-database>.



Compensatory Time

- Compensatory Time Caps:**

	Non-"Z"	"Z"	"L"
	FLSA Covered	FLSA Exempt	Law Enforcement
Unions			
Automotive Machinists	120		
Building Inspectors	100	160 ¹	
Craft Coalition	240		
Deputy Probation Officers	160	160 ¹	
Deputy Sheriffs' Association	160		
District Attorney Invest.		480	480
Electrical Workers	200		
Instit. Police Officers	80		80
Laborers	240	160 ¹	480
Local 21	120	160 ¹	
Mgt. & Sup. Sheriff	160	160 ¹	
Municipal Attorneys		0	
MEA Misc.		0 ²	
Operating Engineers	120	160 ¹	480
Painters	240		
Plumbers	240		
SEIU, Misc.	240		480
SEIU, Nurses			
Stat. Eng.	240	240	
Sup. Prob. Off.	120	160 ¹	
Teamsters, L856, Misc.	240	240	
Teamsters, L856, Sup. Nurses	240		
TWU, Local 200	120 ³	160 ¹	
TWU, Local 250-A Multi.	80	160 ¹	
TWU, Local 250-A Auto. Serv.	120		
UAPD		160 ¹	
Unrepresented	160	160 ¹	

Notes:

- Non-"Z" and "L" designated classification compensatory time always maintains a cash value (i.e., must earn paid overtime if over compensatory cap and compensatory time must be cashed out upon separation; cannot be waived.)
- "L" designated classifications may never earn more than 480 hours of compensatory time and Non-"Z" designated classification may never earn more than 240 hours of compensatory time per the FLSA.

Administrative Leave:

- Municipal Attorneys - 80 hour cap (40 hour carry over).
- MEA – Effective 7/1/19 no longer accrue Administrative Leave. Unused Administrative Leave may be used through 6/30/22.

¹ 120 hour carry over between fiscal years

² May transfer up to 100 hours from prior MOU

³ 80 hour carry over between fiscal years



Compensatory Time

- **Caps versus Annual Accruals**

- Caps: Can never go over these; may not earn more compensatory time until you go below
- Annual Accruals: Independent of caps, may only earn up to stated number of hours in a fiscal year regardless if are under the cap

Example 1:

Balance Cap: 150 Hours
Annual Accrual Cap: None

Comp Time Hours Earned	50	50	50	50	50	Total Earned in FY: 250 Hours
Comp Time Hours Used	50	50	50	50	50	Balance: 0

→ Employee can continue to earn compensatory time regardless of never exceeding the cap.

Example 2:

Balance Cap: 150 Hours
Annual Accrual Cap: 150 Hours

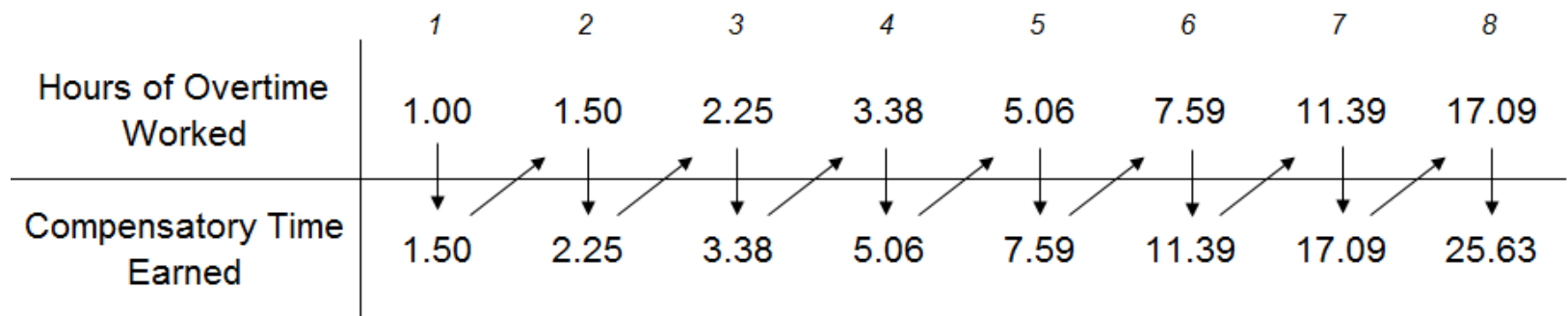
Comp Time Hours Earned	50	50	50	Total Earned in FY: 150 Hours
Comp Time Hours Used	50	50	50	Balance: 0

→ Despite having a compensatory time balance of 0 hours, employee is not eligible to earn any additional compensatory time for the remainder of the fiscal year.

- Earn and Burn

OVERTIME V. COMPENSATORY TIME

The Consequence of 'Earn and Burn'



→ by the 8th cycle of 'earn and burn', the initial 1.5 hours of overtime liability has increased to over 25 hours (a 17 fold increase).



Compensatory Time

- **Cashing Out for Non-“Z” or “L” Compensatory Time:**
(i.e., not applicable to ‘Z’ Symbol (salaried) employees)
 - When:
 - Appointment in Another Department¹: An employee who is appointed to a position in another department shall have their entire compensatory time balances paid out.
 - Upon Promotion¹: An employee who is appointed to a position in a higher, Non-Z or L designated classification or who is appointed to a position in a Z- designated classification shall have their entire compensatory time balance paid out.
 - Upon Separation: Applies to all MOUs.
 - Rate of Pay:
 - Use the last FLSA regular rate of pay.

¹ *Applies to the following MOUs only:* Auto. Mach., Local 1414, Building Inspectors, Deputy Probation Officers, Electricians, Local 6, Oper. Eng., Local 3, Supervising Probation Officers, TWU, Local 250-A (7410), TWU, Local 250-A (Multi), Local 21, TWU, Local 200, Laborers, Craft Coal., Stat. Eng., Oper. Eng., Plumbers, DSA*, MSA*, Teamsters, L856 Multi, DAIA*, Unrep., Painters; * (see specific MOU provision for variations)



Know the Law for Non- 'Z' Symbol (hourly) Employees (FLSA non-exempt)

- Just because you don't assign an employee to stay late, does not mean the you are not responsible for paying those hours. Employees who, with the knowledge or acquiescence of their employer, continue to work after their shift is over, albeit voluntarily, are engaged in working time. The reason for the work is immaterial; as long as the employer "suffers or permits" employees to work on its behalf, proper compensation must be paid (§ 785.11). For example, if you are aware that employees are taking home work with them and don't ask them to stop, your department would be liable for the work they complete at home. However, employees that work overtime without authorization are subject to discipline.
- Employees cannot waive their rights to overtime. Nothing in this article shall in any way limit or prohibit the payment of wages at more frequent intervals, or in greater amounts, or in full when or before due, but no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied (§219). For example, even if the union and covered employees are signatories to an alternative work schedule agreement, if that agreement fails to provide for legally mandated overtime, your department would still be liable despite their agreement.



Salaried Employees and Paid Leave

- Principles of public accountability allow public agencies to reduce the compensation of salaried employees when they do not work and do not utilize paid leave (29 C.F.R. §541.710(a) *Employees of Public Agencies*).
- Nevertheless, many public agencies, including San Francisco, allow their salaried employees to earn limited compensatory time off if they work additional hours. This is negotiated benefit varies by MOU. In some instances, this compensatory time is earned at straight-time while others allow it to be earned at the one-and-one-half time rate. Additionally, sometimes it is an entitlement while in others it is only earned at the discretion of the appointing officer. Accordingly, please reference specific MOUs regarding the application of compensatory time for salaried employees.



Suspension of the 'Z' Symbol

Annual Salary Ordinance (ASO) Section 1.3: subject to the fiscal provisions of the Charter and the availability of funds, the ['Z' symbol for salaried employees] may be suspended to allow overtime payment, pursuant to approval of the Director of Human Resources. Overtime payments shall be limited to:

“extraordinary circumstances in which employees are required to work a significant number of hours in excess of their regular work schedules for a prolonged period of time, with a limited ability to use compensatory time off.”

See link to [Suspension of Z-Symbol PowerPoint](#) for more details.



Other Paid Leaves Provided for Working Additional Hours

- **Administrative Leave:** Provided for under the MAA MOU.
- **Management Leave:** Provided for under the MEA MOU.



Overtime Eligibility

Many MOUs limit an employee's eligibility to sign up for an overtime assignment based on the following situations:

- Employee was out sick or on discipline the day before or after the overtime assignment; or
- Documented poor attendance or unsatisfactory work performance

However, even if the above instances occur:

- The department may still decide to assign the employee to work overtime based upon their operational needs; and
- The department must pay the employee pursuant to the standard overtime calculation as authorized under the MOU



Strategies for Managing Overtime

- Fully Staff to the extent authorized (i.e., fill vacancies)
- Manage Staffing Levels (e.g., stagger paid time off to reduce need to backfill)
- Control Assignment of Overtime (OT must be authorized by Appointing Officer)
- Control Paid Leave (e.g., requests for paid leave should be evaluated in the context of whether it will require backfill)
- Alternative Work Schedules and/or early/late starts to work day
- Compensatory Time Off in-lieu (if does not create backfill liabilities)
- Use of Temporary, As-needed Employees (if additional work is truly as-needed)
- Use Standby Pay (in-lieu of OT, if appropriate)



Overtime Ordinance

- Pursuant to Admin. Code § 18.13-1, individual employees may only work up to the following:
 - 520 overtime hours in a fiscal year (i.e., overtime hours up to 25% of their regularly scheduled, straight-time hours)
 - 72 hours in a week (i.e., regularly scheduled and/or overtime hours)
- Exemptions from the Ordinance can be requested from DHR if necessary (see potential qualifying examples below).
 - The employee is held over for a mandatory overtime assignment and no other qualified employees under the cap are available.
 - An employee under the cap would be forced to work an involuntary overtime assignment if the employee over the cap is not allowed to work the overtime assignment.
 - The employee is assigned to mandatory training that cannot be performed during the employee's normal work schedule.