



# Overtime and Compensatory Time

*Updated: December 2017*





## 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

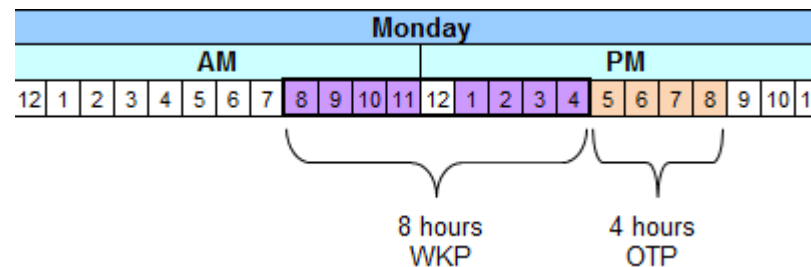
- **One-And-One-Half-Time (1.5x) Overtime ('OTP'):** Earned for hours worked in excess of 8 in a day or 40 hours in a week.
- **Straight-Time (1x) Overtime ('OST'):** Earned for hours worked outside an employee's regular work schedule where an employee has not yet worked more than 8 hours in a day or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



# MOU Overtime – 1x v. 1.5x

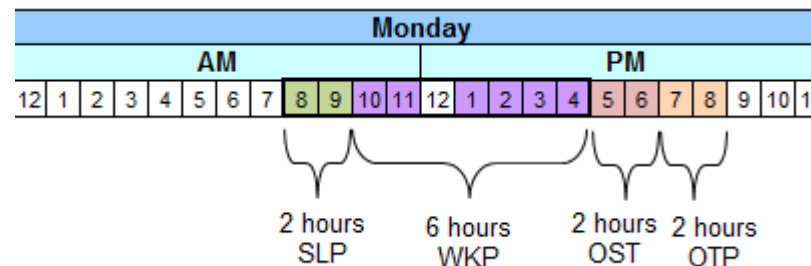
## Example 1:

*Employee works his/her 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 his/her regular work schedule and then works the remaining six hours of his/her 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 – Hours Worked v. Paid

- Based on Hours Worked including Legal Holiday Pay\*:
  - IFPTE, Local 21
  - SEIU, Miscellaneous
- Based on Hours Paid excluding Sick Pay used in the previous 5 work days (i.e., apply the look back provision):
  - Automotive Machinists, Local 1414
  - Operating Engineers, Local 3
- Based on Hours Paid excluding Sick Pay used in the same work week (i.e., no look back provision):
  - Craft Coalition
  - Electrical Workers, Local 6
  - Laborers, Local 261
  - Plumbers, Local 38
- Based on Hours Paid:
  - Stationary Engineers, Local 39

\* *Includes In-Lieu Legal Holidays*



# 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.



## 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>.*





## 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.”**

- Limited to 200 hours of overtime per fiscal year.



# Compensatory Time

- Compensatory Time Caps:**

	Non-"Z"	"Z"	"L"
	FLSA Covered	FLSA Exempt	Law Enforcement
Unions			
Automotive Machinists			
Building Inspectors	240		
Craft Coalition	240		
Deputy Probation Officers	240		
Deputy Sheriffs' Association	160		
District Attorney Invest.		480	480
Electrical Workers	240		
Instit. Police Officers	80		80
Laborers	240		480
Local 21		160 <sup>1</sup>	
Mgt. & Sup. Sheriff	160	160 <sup>1</sup>	
Municipal Attorneys			
MEA Misc.		240 <sup>2</sup>	
Operating Engineers	240		480
Painters	240		
Plumbers	240		
SEIU, Misc.	240		480
SEIU, Nurses			
Stat. Eng.	240	240	
Sup. Prob. Off.	240		
Teamsters, L856, Misc.	240	240	
Teamsters, L856, Sup. Nurses	240		
TWU, Local 200	120 <sup>3</sup>	160 <sup>1</sup>	
TWU, Local 250-A Multi.	240		
TWU, Local 250-A Auto. Serv.	120 <sup>4</sup>		
UAPD			
Unrepresented	160	160	

**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, Misc. - 160 hour cap (120 hour carry over)

<sup>1</sup> 120 hour carry over between fiscal years

<sup>2</sup> Transfer in cap reduced to 160 as of 7/1/17

<sup>3</sup> 80 hour carry over between fiscal years

<sup>4</sup> 40 hour carry over between fiscal years



# Compensatory Time

- **Cashing Out for Non-“Z” or “L” Compensatory Time:** (i.e., not applicable to ‘Z’ Symbol (salaried) employees)
  - Appointment in Another Department<sup>1</sup>: An employee who is appointed to a position in another department shall have his or her entire compensatory time balances paid out at the rate of the underlying classification prior to appointment.
  - Upon Promotion<sup>1</sup>: 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 his or her entire compensatory time balances paid out at the rate of the lower classification prior to promotion.
  - Upon Separation: Applies to all MOUs.

<sup>1</sup> Applies to the following MOUs only: 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)



## Other Paid Leaves Provided for Working Additional Hours

- **Administrative Leave:** Provided for under the MEA and MAA MOUs.
- **Executive Leave:** Provided for under the MEA MOU for Deputy Directors and Department Heads.



# 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.