**OMAG**

**Sample Employee Compensatory Time Policy**

**DISCLAIMER:** This policy template is meant to provide general guidelines and should be used as a reference. It may not take into account all relevant ordinances, charters, policies, practices or organizational structure particular to your City. REVIEW CAREFULLY and revise as needed.

OMAG does not cover “wage” claims, however, we recognize that wage claims can often lead to other employment-related claims that are covered. This sample Compensatory Time Policy is offered as guidance to help cities avoid overtime liability under the Fair Labor Standards Act (FLSA).

The FLSA allows non-exempt government employers to pay overtime as paid time off, in lieu of wages, if an agreement is in place before the compensatory time is earned. Specifically, 29 C.F.R. § 553.23 of the FLSA states:

As a condition for use of compensatory time in lieu of overtime payment in cash, . . . the [Act](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d57f09d5957ea4cc834e41de6c7d54d4&term_occur=1&term_src=Title:29:Subtitle:B:Chapter:V:Subchapter:A:Part:553:Subpart:A:Subjgrp:116:553.23) requires an agreement or understanding reached prior to the performance of work. This can be accomplished pursuant to a collective bargaining agreement, a memorandum of understanding or any other agreement between the [public agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=08a6684d1cbf7f95ffd216b5baa88c8c&term_occur=1&term_src=Title:29:Subtitle:B:Chapter:V:Subchapter:A:Part:553:Subpart:A:Subjgrp:116:553.23) and representatives of the [employees](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f41487a77a1cb3ff3b9016fb246abba6&term_occur=1&term_src=Title:29:Subtitle:B:Chapter:V:Subchapter:A:Part:553:Subpart:A:Subjgrp:116:553.23).

If your City or Town has a policy for compensatory time off in a collective bargaining agreement or a memorandum of understanding, it must be in compliance with 29 C.F.R. § 553.23 in order to be valid.

For information on the conditions for use of compensatory time off, see 29 C.F.R. § 553.25.

Because OMAG does not cover wage claims, it is imperative that these issues be discussed with your City Attorney before implementation. If you or your City Attorney have questions, please call OMAG and ask for:

Monica Coleman Suzanne Paulson

Associate General Counsel General Counsel

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**AGREEMENT TO ACCEPT COMPENSATORY TIME OFF**

**IN LIEU OF OVERTIME PAY**

In accordance with the provisions of the Fair Labor Standards Act and the policies of the City/Town of xxx, non-exempt employees are allowed, with the approval of their department heads, to accrue compensatory time off of work instead of receiving payment for overtime hours worked. I voluntarily agree to accept compensatory time off in lieu of overtime pay for overtime hours worked. I understand that I will accrue compensatory time at the rate of one and one-half hours for each overtime hour worked during a workweek. I understand that this compensatory time will not be counted as time worked for purposes of computing overtime or additional compensatory time.

I further understand that compensatory time may be accrued up to a maximum of 240 hours (divisions and/or departments may establish a lower cap) and must be used or paid in accordance with City/Town policy and the law. I also understand that compensatory time may be limited, preserved, used or cashed out consistent with the provisions of City/Town policy and the law. Occasional cash payment of overtime hours does not negate the compensatory time agreement.

I understand that it is the sole responsibility of a department to monitor and maintain records of my accrued and used compensatory time. I understand that if I would resign or be terminated from my position, transfer from a department or be promoted into an exempt position, the department in which the overtime was incurred is responsible for arranging for me to use or be paid the balance of my accrued compensatory time at my final hourly rate of pay prior to termination or a change in position.

I understand that this agreement is in effect during my employment at the City.

**EMPLOYEE:**

PRINTED NAME\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_SIGNATURE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DEPARTMENT\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_DATE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DEPARTMENT APPROVAL:**

PRINTED NAME\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_SIGNATURE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DEPARTMENT\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_DATE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_