



# Montana Operations Manual

## ***Policy***

**Policy Number**

03-0211

**Effective Date**

July 15, 2010

**Last Revised**

March 23, 2011

**Issuing Authority**

Department of Administration, State Human Resources Division

## **Exempt Compensatory Time**

### **I. Purpose**

This policy establishes minimum standards for administering exempt compensatory time in Montana state government.

### **II. Scope**

This policy covers all positions identified as exempt from the Fair Labor Standards Act (FLSA) in Montana's executive branch except those employed by the Montana university system, the Montana State Fund, elected officials, the personal staff of elected officials, and any other position specifically excluded under Section 2-18-103, and -104, MCA.

Any collective bargaining agreement providing greater exempt compensatory time benefits supersedes this policy.

### **III. Procedures**

Agency management identifies agency positions qualifying for an exemption under the FLSA and Montana's Wage and Hour Laws. Employees in positions identified as exempt may accrue and use exempt compensatory time. Exempt compensatory time does not provide compensation in addition to the employee's annual salary. Exempt compensatory time does provide greater flexibility in scheduling employees in exempt positions.

Agency management shall not issue lump-sum cash payments for accrued exempt compensatory time at anytime.

Nothing in this policy guarantees an employee in an exempt position will be allowed to work hours resulting in the accrual or use of exempt compensatory time.

#### **A. Exempt Compensatory Time**

1. Employees in exempt positions may accrue one-half hour of exempt compensatory time for each one-half hour in a pay status over 40 hours in a

workweek. The supervisor may approve or deny the accrual of exempt compensatory time before or after the employee works the excess hours.

2. Hours in excess of 40 hours in a workweek spent by an employee traveling, training, or attending conferences, lectures, or meetings may be credited as exempt compensatory time as determined by the employee's supervisor.
3. Employees will earn, record, and use exempt compensatory time in one-half hour increments.

## **B. Exempt Compensatory Time Administration**

1. When administering exempt compensatory time, agency management must:
  - a. require advanced approval, whenever possible, for an employee in an exempt position to work hours resulting in accrual of exempt compensatory time;
  - b. require employees to report excess hours worked on a timesheet; and
  - c. follow the record keeping requirements in the Employee Records Management Policy (2.21.6601 through 2.21.6622, ARM).
2. Agency management may adjust an employee's schedule during the workweek to avoid the accrual of exempt compensatory time.

## **C. Carry-over Limits and Extensions**

1. Employees may carry over a maximum of 120 hours of exempt compensatory time from one calendar year into the next year. Balances exceeding 120 hours are considered "excess." Employees will forfeit excess exempt compensatory time unless used within 90 calendar days from the last day of the calendar year in which the compensatory time was earned. Agency management may grant an extension as described below.
2. Employees are responsible for making reasonable written requests to use excess compensatory time during the 90-day grace period. Agency management may grant the request to take the time off or extend the number of days the employee has to use the excess exempt compensatory time. Agency management must document the extensions in writing no later than March 31 of each year. The length of the extension is up to the discretion of the agency director or designee, but must not extend beyond the end of the calendar year in which the extension is granted. Any excess exempt compensatory time remaining at the end of the extension is forfeited. If no extension request is made during the 90-day grace period, the excess hours are forfeited.

#### **D. Exempt Compensatory Time Leave Requests**

1. Employees may take accrued exempt compensatory time as paid time off as approved by their supervisor. If the interest of the state requires the employee's attendance, the state's interest overrides the employee's interest to use exempt compensatory time.
2. Agency management may require an employee to take accrued exempt compensatory time off during any workweek.
3. Effective January 1, 2011, employees in exempt positions with an excess annual leave balance as identified under the Annual Leave Policy (MOM # 03-0305) must use excess annual leave before exempt compensatory time may be used. This provision applies only to excess annual leave balances extended into the grace period following the end-of-year calculations.

#### **E. Transfers and Terminations**

1. Exempt compensatory time may be transferred with an employee when the employee transfers to another agency or to another position provided the new agency's management agree. The employee forfeits the time if the new agency's management does not agree.
2. Agency management may approve the use of exempt compensatory time to extend an employee's termination date up to a maximum of 120 hours, when either of the following occur:
  - a. The employee accrued the exempt compensatory time because of management's request to complete projects or meet objectives.
  - b. Agency management denied the employee reasonable opportunity to take the accrued exempt compensatory time.

#### **F. Option to Cap Accrual Amounts.**

1. Nothing in this policy prohibits agency management from capping the accrual of exempt compensatory time at 120 hours or a lesser amount. Agencies must establish internal written policies and procedures for managing exempt compensatory time if they cap accruals at 120 hours or less.

### **IV. Resources**

- A. Link to the Fair Labor Standards Act of 1938, as amended – <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>
- B. Link to Title 29, CFR, Chapter V – [http://www.dol.gov/dol/cfr/Title\\_29/Chapter\\_V.htm](http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm)

## V. Definitions

All definitions under 2-18-101, MCA apply to this policy. The following definitions also apply.

**Exempt Position:** A position identified as exempt from the overtime pay provisions of the Fair Labor Standards Act (FLSA) or Montana's Wage and Hour Laws.

**Exempt Compensatory Time:** Time accrued by an employee in an exempt position for all time in a pay status in excess of 40 hours in a workweek.

**Grace Period:** The first 90 calendar days from the last day of the calendar year in which the excess leave was accrued. The grace period may be extended to the end of the calendar year if an employee makes a reasonable written request to use excess leave and the employing agency denies all or any portion of the request.

**In a Pay Status:** Time period in which an employee is being paid for hours worked or for annual leave, sick leave, or other paid leave, sick leave fund grants, holidays, or compensatory time.

**Workweek:** A regular, recurring period of 168 hours that occurs over seven consecutive 24 hour periods. In Montana state government, the workweek begins at 12:00 am on Saturday and ends at 11:59 pm on Friday, unless defined otherwise by agency management or a collective bargaining agreement.