Compensated Time Off ("Comp Time")YOUR LEGAL RIGHTS

1.

What is Comp Time?

In certain circumstances, your employer may provide you with *paid* time off from work instead of overtime pay. This time is called compensated time off, or “comp time.” The law regarding comp time agreements is very strict, and requires that an employer follow a number of specific steps in offering an employee time off instead of overtime. For your employer to lawfully offer you comp time, *all* of the following conditions must have been met:

- Your request for comp time instead of overtime pay must be made *in writing*.
- You must have a written agreement with your employer that describes your comp time arrangement.
- You must be regularly scheduled to work at least 40 hours per week.
- Your comp time must be given *at the same rate* as overtime pay. For example, for every hour of overtime worked, you must be given one-and-a-half hours of comp time or, if you would be paid double your rate of pay for overtime, two hours for every hour worked.
- You cannot “store up” more than 240 hours of comp time. Once you “bank” 240 hours of comp time, you must be paid at normal overtime rates for any overtime you work over that.
- Your comp time cannot be subject to a “use it or lose it” policy. It is just like a wage, and can’t be taken away from you if you don’t use it right away.

If any one of these conditions is not met, your employer must pay you overtime. See our Fact Sheet Overtime Pay for more details on how much overtime you should be paid.

2.

How is Comp Time Calculated?

The following example should help you determine whether you are receiving comp time properly. Assume an employee with a valid comp time agreement works the following schedule during a week:

Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
9 hrs.	9 hrs.	10 hrs.	11 hrs.	9 hrs.	2 hrs.	0 hrs.

Total hours worked: 50Regular time hours: 40 Overtime hours: 10 (normally paid at time-and-a-half)

During this week, the employee worked ten (10) hours of overtime, but, under the comp time agreement, her employer only needs to pay her for forty (40) hours at her regular rate of pay. This employee now has a “credit” of 15 hours of comp time (calculated at 1½ times the number of overtime hours she actually worked). When the employer allows this employee to take her compensated time off, she has the right to be paid for 15 hours of work that she does not perform. All of these comp time hours used will be paid at the employee’s regular rate of pay, not at an overtime rate.

3.

Are there exceptions to comp time?

“Exempt” Employees

Employees who are “exempt” from regular overtime laws are also exempt from comp time provisions. These are generally employees who are given a significant amount of responsibility within a company and a lot of independence to make decisions about how the company is run. However, the definition of an exempt employee is much more complicated than this brief description. If you think you might be exempt, see our Fact Sheet Exemptions from Overtime Pay for more information.

Certain Industries

Certain types of employees cannot earn comp time instead of overtime wages because of the type of work they perform. These employees

include workers involved in manufacturing, public housekeeping, the amusement and recreation industry, agricultural industries, and industries handling product after harvest or preparing product for market on a farm.

4. Can my employer tell me when to take my comp time?

   Probably. Your employer can request that you take your comp time on certain days, so long as those days are times when you were regularly scheduled to work.

5. Can my comp time hours expire if I wait too long to use them?

   No. Your employer *cannot* tell you that your earned comp time has expired, or that you've waited too long to take it. Just like vacation time, your comp time is part of your wages, and your employer can't take it away.

6. What happens to my stored-up comp time when I am fired or quit my job?

   Because your comp time is a form of wages, all of your unused comp time must be paid to you in full when you are paid your final wages. Your comp time must be paid at your overtime rate. For example, if you would have earned time-and-a-half for the hours you worked to earn the comp time you are owed, you must be paid at that rate for the hours you have stored up. For more information on when final wages are due, see our Fact Sheet Getting Your Final Paycheck.

For further information about your employment rights, contact the Workers' Rights Clinic.

Disclaimer

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society–Employment Law Center cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.