

OPM Questions and Answers on Compensatory Time Off for Travel (www.opm.gov/oca/compmemo/2005/2005-03-att1.asp)

Q1. What is compensatory time off for travel?

A. Compensatory time off for travel is a new form of compensatory time off that may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable.

Q2. When is this provision effective?

A. This provision is effective on January 28, 2005.

Q3. Are all employees covered by this provision?

A. The new compensatory time off provision applies to an "employee" as defined in 5 U.S.C. 5541(2) who is employed in an "Executive agency" as defined in 5 U.S.C. 105, without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended. The definition includes employees in senior-level (SL) and scientific or professional (ST) positions, but not members of the Senior Executive Service or prevailing rate employees.

Q4. What qualifies as travel for the purpose of this provision?

A. To qualify for this purpose, travel must be officially authorized. In other words, travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies.

Q5. An employee receives compensatory time off for travel only for those hours spent in a travel status. What qualifies as time in a travel status?

A. Travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel.

Q6. What is meant by "usual waiting time"?

A. Airline travelers generally are required to arrive at the airport at a designated pre-departure time (e.g., 1 or 2 hours before the scheduled departure, depending on whether the flight is domestic or international). Such waiting time at the airport is considered usual waiting time and is creditable time in a travel status. In addition, time spent at an intervening airport waiting for a connecting flight (e.g., 1 or 2 hours) also is creditable time in a travel status, subject to exclusions for bona fide meal periods. In all cases, determinations regarding what is creditable as "usual waiting time" are within the sole and exclusive discretion of the employing agency.

Q7. What if an employee experiences an "extended" waiting period?

A. If an employee experiences an unusually long wait prior to his or her initial departure or between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time that is outside the employee's regular working hours is not creditable time in a travel status. An extended waiting period that occurs during an employee's regular working hours is compensable as part of the employee's regularly scheduled administrative workweek.

Q8. Do meal periods count as time in a travel status?

A. For the purpose of earning compensatory time off for travel, bona fide meal periods are not considered time in a travel status. For example, if an employee spends an uninterrupted hour eating a meal at an airport restaurant while waiting for a connecting flight, that hour is not considered time in a travel status.

Q9. What happens once an employee reaches a temporary duty station?

A. Once an employee arrives at the temporary duty station, he or she is no longer considered to be in a travel status. Any time spent at a temporary duty station between arrival and departure is not creditable travel time for the purpose of earning compensatory time off.

Q10. When is it appropriate for an agency to offset creditable time in a travel status by the amount of time the employee spends in normal commuting between home and work?

A. If an employee travels directly between his or her home and a temporary duty station outside the limits of the employee's official duty station (e.g., driving to and from a 3-day conference), the agency must deduct the employee's normal home-to-work/work-to-home commuting time from the creditable travel time. The agency must also deduct an employee's normal commuting time from the creditable travel time if the employee is required-outside of regular working hours-to travel between home and a transportation terminal (e.g., an airport or train station) outside the limits of the employee's official duty station.

Q11. What if an employee travels to a transportation terminal within the limits of his or her official duty station?

A. An employee's time spent traveling outside of regular working hours to or from a transportation terminal within the limits of his or her official duty station is considered equivalent to commuting time and is not creditable time in a travel status for the purpose of earning compensatory time off.

Q12. What if an employee travels from a worksite to a transportation terminal?

A. If an employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies.

Q13. How is compensatory time off for travel earned and credited?

A. Compensatory time off for travel is earned for qualifying time in a travel status. Agencies may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must track and manage compensatory time off for travel separately from other forms of compensatory time off.

Q14. Is there a limitation on the amount of compensatory time off for travel an employee may earn?

A. No.

Q15. How does an employee request credit for compensatory time off for travel?

A. Agencies may establish procedures for requesting credit for compensatory time off for travel. An employee must comply with his or her agency's procedures for requesting credit of compensatory time off, and the employee must file a request for such credit within the time period established by the agency.

Q16. How does an employee use accrued compensatory time off for travel?

A. An employee must request permission from his or her supervisor to schedule the use of his or her accrued compensatory time off for travel in accordance with agency policies and procedures. Compensatory time off for travel may be used when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. Employees must use accrued compensatory time off for travel in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes).

Q17. How long does an employee have to use accrued compensatory time off for travel?

A. An employee must use his or her accrued compensatory time off for travel by the end of the 26th pay period after the pay period in which it was credited or the employee must forfeit such compensatory time off, except in certain circumstances. (See Q18.)

Q18. Under what circumstances does an employee maintain credit for accrued compensatory time off for travel beyond the 26th pay period after the pay period in which it was credited?

A. Unused compensatory time off for travel will be held in abeyance for an employee who separates, or is placed in a leave without pay status, and later returns following (1) separation or leave without pay to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and a return to service through the exercise of a reemployment right or (2) separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81. The employee must use all of the compensatory time off held in abeyance by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited.

Q19. May unused compensatory time off for travel be restored if an employee does not use it by the end of the 26th pay period after the pay period in which it was credited?

A. Except in certain circumstances (see Q18), any compensatory time off for travel not used by the end of the 26th pay period after the pay period in which it was credited must be forfeited.

Q20. What happens to an employee's unused compensatory time off for travel upon separation from Federal service?

A. Except in certain circumstances (see Q18), an employee must forfeit all unused compensatory time off for travel upon separation from Federal service.

Q21. May an employee receive a lump-sum payment for accrued compensatory time off for travel upon separation from an agency?

A. No. The law prohibits payment for unused compensatory time off for travel under any circumstances.

Q22. What happens to an employee's accrued compensatory time off for travel upon transfer to another agency?

A. When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), the employee must forfeit all of his or her unused compensatory time off for travel.

Q23. What happens to an employee's accrued compensatory time off for travel when the employee moves to a position that is not covered by the regulations in 5 CFR part 550, subpart N?

A. When an employee moves to a position in an agency that is not covered by the compensatory time off for travel provisions (e.g., the United States Postal Service), the employee must forfeit all of his or her unused compensatory time off for travel. However, the gaining agency may use its own legal authority to give the employee credit for such compensatory time off.

Q24. Is compensatory time off for travel considered in applying the premium pay and aggregate pay caps?

A. No. Compensatory time off for travel may not be considered in applying the biweekly or annual premium pay limitations established under 5 U.S.C. 5547 or the aggregate limitation on pay established under 5 U.S.C. 5307.

Q25. When are criminal investigators who receive availability pay precluded from earning compensatory time off for travel?

A. Compensatory time off for travel is earned only for hours that are not otherwise compensable. The term "compensable" is defined at 5 CFR 550.1403 to include any hours of a

type that are creditable under other compensation provisions, even if there are compensation caps that limit the payment of premium pay for those hours (e.g., the 25 percent cap on availability pay and the biweekly premium pay cap). For availability pay recipients, this means that hours of travel are not creditable as time in a travel status for compensatory time off purposes if the hours are (1) compensated by basic pay, (2) regularly scheduled overtime hours creditable under 5 U.S.C. 5542, or (3) "unscheduled duty hours" as described in 5 CFR 550.182(a), (c), and (d).

Q26. What constitutes "unscheduled duty hours" as described in 5 CFR 550.182(a), (c), and (d)?

A. Under the availability pay regulations, unscheduled duty hours include (1) all irregular overtime hours-i.e., overtime work that is not scheduled in advance of the employee's administrative workweek, (2) the first 2 overtime hours on any day that are part of the employee's basic 40-hour workweek, without regard to whether the hours are unscheduled or regularly scheduled, and (3) any approved nonwork availability hours. However, special agents in the Diplomatic Security Service of the Department of State may count only hours actually worked as unscheduled duty hours.

Q27. Why are criminal investigators who receive availability pay precluded from earning compensatory time off when they travel during unscheduled duty hours?

A. The purpose of availability pay is to ensure the availability of criminal investigators (and certain similar law enforcement employees) for unscheduled duty in excess of a 40-hour workweek based on the needs of the employing agency. Availability pay compensates an employee for all unscheduled duty hours. Compensatory time off for travel is earned only for hours that are not otherwise compensable. Thus, availability pay recipients may not earn compensatory time off for travel during unscheduled duty hours because the employees are entitled to availability pay for those hours.

Q28. When is it possible for criminal investigators who receive availability pay to earn compensatory time off for travel?

A. When an employee who receives availability pay is required to travel on a non-workday or on a regular workday (during hours that exceed the employee's basic 8-hour workday), and the travel does not meet one of the four criteria in 5 U.S.C. 5542(b)(2)(B) and 5 CFR 550.112(g)(2), the travel time is not compensable as overtime hours of work under regular overtime or availability pay. Thus, the employee may earn compensatory time off for such travel, subject to the exclusions as specified in 5 CFR 550.1404(b)(2) and (b)(3) and the requirements in 5 CFR 550.1404(c) and (d).

Under the provisions in 5 U.S.C. 5542(b)(2)(B) and 5 CFR 550.112(g)(2), travel time is compensable as overtime hours of work if the travel is away from the employee's official duty station and —

- i. involves the performance of work while traveling,
- ii. is incident to travel that involves the performance of work while traveling,
- iii. is carried out under arduous conditions, or
- iv. results from an event which could not be scheduled or controlled administratively.

The phrase "an event which could not be scheduled or controlled administratively" refers to the ability of an agency in the executive branch of the United States Government to control the scheduling of an event which necessitates an employee's travel. If the employing agency or another executive branch agency has any control over the scheduling of the event, including by means of approval of a contract for it, then the event is administratively controllable, and the travel to and from the event cannot be credited as overtime hours of work.

For example, an interagency conference sponsored by the Department of Justice would be considered a joint endeavor of the participating executive branch agencies and within their administrative control. Under these circumstances, the travel time outside an employee's regular working hours is not compensable as overtime hours of work under regular overtime or availability pay. Therefore, the employee may earn compensatory time off for such travel, subject to the exclusions as specified in 5 CFR 550.1404(b)(2) and (b)(3) and the requirements in 5 CFR 550.1404(c) and (d).

Q29. If an employee is required to travel on a Federal holiday (or an "in lieu of" holiday), is the employee entitled to receive compensatory time off for travel?

A. Although most employees do not receive holiday premium pay for time spent traveling on a holiday (or an "in lieu of" holiday), an employee continues to be entitled to pay for the holiday in the same manner as if the travel were not required. Thus, employees may not earn compensatory time off for travel during basic (non-overtime) holiday hours because they are entitled to their rate of basic pay for those hours. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable.

Q30. If an employee's regularly scheduled tour of duty is Sunday through Thursday and the employee is required to travel on a Sunday during regular working hours, is the employee entitled to earn compensatory time off for travel?

A. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Thus, an employee may not earn compensatory time off for traveling on a workday during regular working hours because the employee is receiving his or her rate of basic pay for those hours.

Q31. If an employee is eligible to receive overtime pay for a period of travel because the travel meets one of the four criteria in 5 CFR 550.112(g)(2), is the employee eligible to earn compensatory time off for any portion of the travel that may not be compensable because of the biweekly cap on premium pay?

A. No. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. The term "compensable" is defined at 5 CFR 550.1403 to make clear what periods of time are "not otherwise compensable" and thus potentially creditable for the purpose of earning the new compensatory time off for travel. Time is considered compensable if the time is creditable as hours of work for the purpose of determining a specific pay entitlement (e.g., overtime pay for travel that meets one of the four criteria in 5 CFR 550.112(g)(2)) even when that time may not actually generate additional compensation because of applicable pay

limitations (e.g., biweekly premium pay cap). The capped premium pay is considered complete compensation for all hours of work creditable under the premium pay provisions.

In other words, even though an employee may not receive overtime pay for all of his or her travel hours because of the biweekly premium pay cap, all of the travel time is still considered to be compensable under 5 CFR 550.112(g)(2). Under these circumstances, the employee has been compensated fully under the law for all of the travel hours and the employee may not earn compensatory time off for any portion of such travel that may not generate additional compensation because of the biweekly cap on premium pay.

Q32. How is an employee's travel time calculated for the purpose of earning compensatory time off when the travel involves two or more time zones?

A. Under 5 CFR 550.1404(b)(1), time in a travel status includes the time an employee "actually spends traveling" and the usual waiting time that precedes or interrupts the travel, subject to certain exclusions as specified in section 550.1404 of the regulations. When an employee's travel involves two or more time zones, the time zone from point of first departure must be used to determine how many hours the employee actually spent in a travel status for the purpose of accruing compensatory time off. For example, if an employee travels from his official duty station in Washington, DC to a temporary duty station in San Francisco, CA, the Washington, DC time zone must be used to determine how many hours the employee spent in a travel status. However, on the return trip to Washington, DC, the time zone from San Francisco, CA, must be used to calculate how many hours the employee actually spent in a travel status.

Q33. Are intermittent employees eligible to earn compensatory time off for travel?

A. No. Compensatory time off for travel may be used by an employee when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. (See 5 CFR 550.1406(b).) Also see the definition of "scheduled tour of duty for leave purposes" in 5 CFR 550.1403. Employees who are on intermittent work schedules are not eligible to earn and use compensatory time off for travel because they do not have a scheduled tour of duty for leave purposes.

Q34. If a part-time employee's regularly scheduled tour of duty is Monday through Friday, 8:00 a.m. to 2:30 p.m., and the employee is required to travel on a Friday from 2:30 p.m. to 4:30 p.m., is the employee entitled to earn compensatory time off for those 2 hours?

A. No. For an employee on a part-time tour of duty, overtime work generally is work in excess of 8 hours in a day or 40 hours in a week. Work-related travel time outside a part-time employee's scheduled tour of duty, but not in excess of 8 hours in a day or 40 hours in a week, is credited as non-overtime hours of work. Thus, a part-time employee may not earn compensatory time off for traveling during non-overtime hours of work because the employee is receiving his or her rate of basic pay for those hours. Compensatory time off for travel is earned only for hours that are not otherwise compensable.

Q35. May an employee earn compensatory time off when he or she travels in conjunction with the performance of union representational duties?

A. No. The term "travel" is defined at 5 CFR 550.1403 to mean officially authorized travel-i.e., travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies. The term "travel for work purposes" is intended to mean travel for agency-related work purposes. Thus, employees who travel in connection with union activities are not entitled to earn compensatory time off because they are traveling for the benefit of the union, and not for agency-related work purposes.