

OVERTIME/COMPENSATORY TIME DISCLOSURE STATEMENT

During the term of an individual's employment with the District of Columbia government, overtime work may be necessary. This disclosure statement explains the District's overtime policies with regard to a new employee's status under the Fair Labor Standards Act (FLSA), status under collective bargaining and applicability of District pay laws and rules.

All overtime work must be officially ordered and approved before it is performed. An employee is to perform no work outside his or her scheduled work hours unless the work has been **ordered and approved** by the employee's supervisor or a designated authorizing official.

An employee's entitlement to overtime compensation (paid overtime compensation or compensatory time off) will be determined on the basis of (1) his or her status under the FLSA, and (2) his or her status under collective bargaining. If an employee is not subject to the overtime provisions of the FLSA (exempt), he or she will be entitled to overtime compensation in accordance with District pay laws, rules or collective bargaining agreement. If an employee is subject to the overtime provisions of the FLSA (nonexempt), he or she will be entitled to overtime compensation in accordance with either the provisions of the FLSA or District pay laws, rules or collective bargaining agreement, whichever provides the more favorable employee benefit.

The FLSA establishes minimum standards, requirements and entitlements for the payment of overtime compensation to nonexempt employees. **The employer may not unilaterally diminish nor may employee representatives enter into an agreement with the employer to diminish, the FLSA minimum standards, entitlements or requirements.**

THE FOLLOWING OVERTIME PROVISIONS ARE IN EFFECT FOR *NONEXEMPT* EMPLOYEES.

As a general rule, the FLSA requires that nonexempt employees receive an additional 50 percent of his or her "regular hourly rate" of pay for all hours of actual work performed in excess of 40 hours in a workweek (or in excess of the designated hours in an applicable work period). Basically, an employee's regular hourly rate" is equal to his or her total pay for the workweek divided by the total number of hours actually worked during that workweek. Periods in a workweek during which an employee is on paid leave (i.e., annual leave, sick leave or other paid leave, including compensatory time off, if applicable) and paid holidays **are not included in the computation of actual work**. Therefore, a nonexempt employee's entitlement to paid overtime compensation under the FLSA cannot be determined until all work for the workweek has been completed.

The substitution of compensatory time off for paid overtime compensation is a proper subject of negotiation. **The FLSA requires that where employees have a representative, an agreement or understanding concerning the use of compensatory time be reached between the representative and employer before compensatory time can be substituted for paid overtime compensation.** Therefore, represented employees may only receive compensatory time in lieu of pay for FLSA overtime pursuant to the provisions of a collective bargaining agreement, memorandum of understanding, or other agreement between the agency and employee representative.

If an employee is not represented, the FLSA provides that compensatory time may be substituted for paid overtime compensation only with the prior consent of the nonexempt employee. The District of Columbia requires that all new employees consent to the use of either paid overtime compensation or compensatory time at the agency's discretion as a condition is assigned is in a recognized bargaining unit, since changes in assignment or representation may occur during the employee's career. If an employee is represented, the provisions of the preceding paragraph shall be applicable for all periods of union representation.