

## Compensatory Time-off in Lieu of Overtime Premium Pay

Information on this page was current as of the day of publication. For the latest information visit the [Auburn University FLSA](#) page.

### Good Question!

**Can supervisors mandate that overtime hours worked will be “paid” by providing “compensatory time off” in lieu of overtime premium pay?**

<b>Regulation:</b>	<b>Fair Labor Standards Act (FLSA); Section 7(o)</b>
<b>Covered Employees:</b>	<b>1) University Staff Employees – “Student” and “non-student”</b> employees; whose jobs are designated as “Non-Exempt” ( <i>not exempt</i> from the obligations and requirements for the accurate recording of working time, right to a minimum wage and overtime pay provisions of the FLSA.) <b>2) Faculty and Staff Supervisors</b> – Any employee who directly supervises other employees whose jobs, by virtue of the work they are performing, are designated as “non-Exempt.”

### Right Answer!

**No, we cannot “mandate” this form of overtime premium payment.**

As a public employer, the University has the option of providing compensatory time off in lieu of the earned overtime premium pay; however it is not at its sole discretion. The FLSA regulation allows us to enter into “...the agreement or understanding concerning compensatory time off” with “the individual employee and must be reached prior to the performance of work.” At Auburn this “agreement” occurs when the employee signs the receipt of the Employee Handbook which contains the notification that should overtime hours be worked, they “...will receive either compensatory time off from work or overtime pay...”

“This agreement or understanding with individual employees need not be in writing, but a record of its existence must be kept...” And, as this provision states, “...an agreement or understanding would be presumed to exist for purposes of FLSA section 7(o) with respect to any employee who fails to express to the employer an unwillingness to accept compensatory time off in lieu of overtime pay.” Additionally “...the employee's decision to accept compensatory time off in lieu of cash overtime payments must be made freely and without coercion or pressure.”

The employee therefore can retract their “agreement” by expressing prior to the work being performed, “...an unwillingness to accept compensatory time off in lieu of overtime pay.” While this expression can be verbal, it’s strongly recommended that supervisors request that the employee send their request via email.

### No Exceptions Permitted

As this is a federal law requirement, no exception can be granted regarding this obligation. The following link provides the Code of Federal Regulations (FLSA Section 7(o)) information regarding this requirement:

[§553.23 Agreement or understanding prior to performance of work.](#)

Questions or comments regarding this “Good to Know!” bulletin can be directed to Human Resources at 844-4145 or [univhr@auburn.edu](mailto:univhr@auburn.edu).