

KH 3-27-2010

**COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
POLICY ON
OVERTIME AND COMPENSATORY TIME**

The standard work week for Commission employees is forty hours. For purposes of overtime calculations, the work week starts at 12:00 a.m. Sunday morning and concludes at 11:59 p.m. on Saturday night.

Exempt employees

Executive, administrative and professional employees (such as attorneys), as defined by the Fair Labor Standards Act, are exempt from the overtime provisions of the Act. Exempt employees will normally not be given compensatory time for hours worked in excess of forty per week. In extraordinary situations, the Director or Deputy Director may approve compensatory time for exempt employees. An “extraordinary situation” will not be found to exist unless the employee has worked at least 45 hours in the work week for which compensatory time is sought. After 45 hours of work in a work week, the exempt employee may petition the Director or Deputy Director for compensatory time at the rate of one hour for each hour worked in excess of 45.

Exempt employees are encouraged to use the Commission’s policy on flexible scheduling.

Non-exempt employees

Prior approval to work overtime must be obtained from the Director, Deputy Director, Supervising Attorney or Lead Attorney in the Public Defender office before the employee works in excess of forty hours in a week. Failure to secure approval may subject an employee to discipline.

Non-exempt employees must be paid time and one-half their regular rates for all hours worked in excess of forty in a workweek.

Compensatory time may be used in lieu of overtime compensation and will be at a rate of one and one-half hours for each hour of employment for which overtime pay would normally be required. There must be an agreement or understanding between the employee and the Commission, prior to the performance of the work for which compensatory time is sought, to substitute compensatory time off for overtime pay.

Use and Accrual of Compensatory Time

An employee who has accrued compensatory time off must be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the office. Absent prior approval of the Director, Deputy Director, Supervising Attorney or Lead Attorney, the employee who has accrued compensatory time must use that time within two months of accruing it. The Director may require that an employee use accrued compensatory time.

Compensatory time accrual is limited to forty hours. When forty hours is reached, any further overtime will be paid via payroll. A non-exempt employee's unused compensatory time will be paid upon termination. The rate of pay must be either the employee's final regular rate or the average regular rate received by the employee during the last three years of employment, whichever is higher. Upon termination, an exempt employee's unused compensatory time will be canceled.