



# New Mexico State Personnel Board State Personnel Office

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## Interpretative Memorandum 2011 – 004

Date: August 12, 2011  
To: Cabinet Secretaries, Agency Directors and Human Resource Managers  
From: Eugene J. Moser,  State Personnel Director  
Subject: Compensatory Time

### 1. Purpose

This memorandum is developed to provide interpretation and guidance regarding the application of State Personnel Board (SPB) Rule, **Subsection J of Overtime, 1.7.4.14 NMAC** which provides that:

"Agencies shall pay *Fair Labor Standards Act* covered, non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to compensatory time off. Employees may accrue a maximum of 240 hours of compensatory time, unless otherwise authorized by statute and shall be paid for accrued compensatory time upon separation." Review of department policies governing compensatory time shows a wide variation in balances that can be accrued (from 40 hours to 240 hours) and when compensatory time should be used or paid out (from 3 months to unstated). Additionally, some departments only offer compensatory time when overtime is assigned.

### 2. Background

The current collective bargaining agreements (CBA) provide that:

- When overtime must be worked and compensatory leave is available to offer, the FLSA non-exempt employee may be offered a choice between cash payment or compensatory time; and

- If the employee is only offered compensatory time, the employee may decline the work assignment without any adverse action.

While compensatory time off provides a clear benefit in managing departmental operations, its usage should always be given considerable thought and consideration of the impact to the budget by deferring the liability. This creates issues because the level of compensatory time paid out will be paid out based upon an employee's hourly rate at the time it is paid out and not the hourly rate when the liability was incurred.

### **3. Guidelines**

The following is suggested for implementation and management of usage of compensatory leave within state government:

- All supervisors must ensure that granting compensatory leave is offered only when other viable options have been assessed; and
- An employee is offered a choice between receiving the cash payment or compensatory time for overtime worked. This protects the manager's ability to assign the employee the overtime. If only compensatory leave is offered the employee covered by CBA has the option to refuse to work.
- If compensatory leave is offered it should be either used or paid within 6 months from the date the overtime is worked.

This agreement for compensatory time should be in writing. If the employee does not agree to this request, cash payment for the overtime should be made rather than using the compensatory time.