

Paid Time Off in Lieu of Wages Policy

Policy

Paid time off in lieu of wages is a compensation option available to operating locations only when:

- the operating location's standard workweek is 37.5 hours long,
- the employee is nonexempt, and
- the compensation is for the non-overtime portion of any time worked by the employee in excess of the standard workweek.

Background

According to the Fair Labor Standards Act (FLSA), if an operating location has a standard workweek that is 37.5 hours long, and a nonexempt employee works more than 37.5 hours in a week, the employee will earn overtime only if he or she works more than 40 hours in the week, and only for the time that is in excess of 40 hours.

That is, up to 2.5 hours — the difference between the length of the standard workweek at the location and the 40-hour per week threshold for overtime — of the time worked in excess of 37.5 hours in a given week is not considered overtime under FLSA.

Compensation Options for 37.5-Hour Workweeks

Operating locations that have a standard workweek of 37.5 hours have two options for compensating nonexempt employees for the nonovertime portion of any time worked in excess of the standard workweek:

- compensate the employees at their regular rate.
- give the employees a corresponding amount of paid time off in lieu of wages.

RF Recommendation

In order to ensure that prompt payment laws are satisfied and to avoid the complications that may be caused by the requirements that accompany the provision of paid time off in lieu of wages (discussed below), the RF recommends that operating locations that have a standard workweek of 37.5 hours compensate nonexempt employees at their regular rate for the nonovertime portion of any time worked in excess of 37.5 hours for a given week.

Requirements Regarding Paid Time Off in Lieu of Wages

Because paid time off in lieu of wages is compensation due the employee, it must be paid if it is not used and an employee's right to this compensation cannot be waived. Furthermore, this time is an unfunded liability against the account on which the work was performed.

Therefore, operating locations with a standard workweek of 37.5 hours that elect to provide paid time off in lieu of wages to nonexempt employees for the nonovertime portion of any time worked in excess of 37.5 hours for a given week must satisfy the following conditions:

- The employee must consent to receiving paid time off in lieu of wages.
- The employee must receive payment for any such unused time when the *account appointment* terminates. This liability *cannot* be transferred to another account.
- Payment for unused time must be given at the employee's current pay rate; i.e., the rate when the payment is made.
- If a sponsor is unable or unwilling to make payments for unused time, the operating location must do so.

References

- [Compensation at Termination of Employment](#)
- [Requirements for Overtime Pay](#)
- [Leave Administration Handbook](#)
- [Prompt Notice of Termination and Prompt Final Payments Policy](#)

Feedback

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