


Approved for Release

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**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #234, FY19

SUBJECT: Compensatory Time Off for Religious Observances

EFFECTIVE DATE: May 29, 2019

EXPIRATION DATE: Effective until cancelled or superseded

SUPERSEDES: Not applicable

BACKGROUND: The Office of Personnel Management (OPM) issued final regulations ([84 FR 17931](#)) amending the current regulations on compensatory time off for religious observances found in Title 5, Code of Federal Regulations (CFR) Part 550, Subpart J. OPM's final regulations, effective May 29, 2019, clarify provisions on employee coverage, employee and agency responsibilities, scheduling time to earn and use religious compensatory time off, documentation, accumulation, and the compensation/collection of employee compensatory time balances upon separation or transfer.

PURPOSE: This HR Bulletin provides Department-wide guidance on compensatory time off for religious observance, and establishes procedures for implementing the amended OPM regulations.

COVERAGE: The provisions of this bulletin are applicable to employees, as defined in Title 5, United States Code (U.S.C.) § 2105, including members of the Senior Executive Service (SES), employees in senior-level (SL) and scientific or professional (ST) positions, and prevailing rate employees (WG, WL, WS, etc.) who have a scheduled tour of duty.

DEFINITIONS:

- **Overtime Work** – Work performed by an employee outside his or her scheduled tour of duty for the purpose of making up time lost for meeting personal religious requirements, as the term is explained in the definition (below) of “religious compensatory time off.” It is also deemed to include work performed by a part-time employee outside of his or her scheduled tour of duty, even if that work is below applicable overtime thresholds (i.e., below 40 hours in a week) and is work an employee performs on holiday hours (within

the employee's scheduled tour of duty) during which the employee would otherwise be excused from duty.

- **Rate of Basic Pay** – The rate of pay fixed by law or administrative action for the position held by an employee, including any special rate under Title 5, CFR part 530, subpart C; locality rate under Title 5, CFR part 531, subpart F; retained rate under Title 5, CFR part 536; or similar rate under other legal authority, before any deductions and excluding additional pay of any other kind. (For example, a rate of basic pay does not include additional pay such as night shift differentials under Title 5, U.S.C. 5343(f) or environmental differentials under Title 5, U.S.C. 5343(c)(4).)
- **Religious Compensatory Time Off** – Compensatory time off, as authorized by Title 5, U.S.C. 5550a, under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to perform overtime work in order to make up for time the employee takes off to meet those personal religious requirements. Those requirements need not be officially mandated by a religious organization to which the employee belongs. It is sufficient that the employee's personal religious beliefs cause the employee to feel an obligation that he or she should be absent from work for a religious purpose. An employee approved to perform overtime work under this subpart will be granted an equal amount of compensatory time off from his or her scheduled tour of duty (in lieu of overtime pay or other pay otherwise payable) to meet his or her personal religious obligations.
- **Scheduled Tour of Duty** – The regular work hours in an established full-time or part-time work schedule during which the employee is charged leave or time off when absent.

POLICY

It is the policy of the Department of Commerce (Department) to follow the provisions of Title 5, CFR, Part 550, Subpart J, which permit employees to rearrange work hours (in conjunction with earning religious compensatory time) when the employee's personal religious beliefs require an absence from work to meet personal religious requirements. Supervisors/managers must provide employees an opportunity to earn religious compensatory time off by performing overtime work, as described under Title 5, CFR § 550.1003 and in the Definitions section of this bulletin. In accordance with Title 5, CFR § 550.1009, religious compensatory time hours are used to cover approved absences and do not create an entitlement to premium pay (including overtime pay) or other pay.

Requests for Compensatory Time Off for Religious Observances: Requests to earn or use religious compensatory time shall be submitted by employees in advance of the religious observance through the automated time and attendance system (i.e., webTA) following the procedures prescribed in this bulletin. Employees may accumulate only the amount of religious compensatory time off needed to cover an approved absence for a religious observance that has already occurred or to cover an approved absence for a future religious observance.

As prescribed under Title 5, CFR § 550.1005(b), requests to use religious compensatory time off must be approved through webTA, unless the supervisor/manager determines that approving the request would interfere with the organization's ability to efficiently carry out its mission.

Supervisors/managers have the discretion to determine the specific timing of when employees will be allowed to earn religious compensatory time off (by performing overtime work), based on the specific work requirements of the organization. If an employee's request is denied, the supervisor/manager must provide a written explanation to the employee stating the reason for the denial.

Scheduling Time to Earn and Use Religious Compensatory Time Off: In accordance with Title 5, CFR §§ 550.1006(b) and 550.1006(c), religious compensatory time off may be earned up to 13 pay periods in advance of the pay period in which it is intended to be used, or earned within 13 pay periods following the pay period in which it was used.

Employees who do not use earned religious compensatory time off as planned, may use that time toward a future approved religious observance, even if the future observance is more than 13 pay periods after the original time off was earned. However, in these instances, employees may not earn additional religious compensatory time off until the already accrued amount has been used, or the need to earn additional religious compensatory time off has been properly established and documented.

Employees who use religious compensatory time off before earning it, must fulfill his/her obligation to perform overtime work within 13 pay periods after the pay period in which he/she used the advanced religious compensatory time. Employees who fail to earn the time off within 13 pay periods after taking it, may have corrective action taken to eliminate or reduce their negative religious compensatory time balance by having a reduction made to their existing paid time off leave balance(s). Employees may request that a particular paid time off leave category be charged (with the exception of sick leave) to reduce their negative balance of advanced religious compensatory time off; however, if the employee does not submit a request, the following order of precedence shall be used, as applicable:

- Compensatory time off for travel
- Compensatory time off in lieu of regular overtime pay
- Time Off Award
- Credit hours
- Annual leave

Any negative balance of advanced religious compensatory time off remaining after exhausting the employee's other paid time off categories listed above, must be charged to Leave Without Pay (LWOP). Replacing the previously paid advanced time off with LWOP will result in a financial debt to the employee that is subject to debt collection procedures.

Impact on Pay: The overtime hours worked to earn religious compensatory time off does not create an entitlement to premium pay (including overtime pay) under Title 5, CFR Part 550, Subpart A or the Fair Labor Standards Act (FLSA) overtime pay under Title 5, CFR Part 551. Religious compensatory time off is excluded from the premium pay limitations described in Title 5, CFR §§ 550.105, 550.106, and 550.107.

Record Keeping: The webTA system will serve as the record keeping mechanism to record and document the dates, times, and amount of religious compensatory time each employee earns and uses. In accordance with Title 5, CFR § 551.1007, employee requests must contain the

information prescribed under the Procedures section of this bulletin. Employees will be responsible for coding both religious compensatory time earned and used on their individual timesheet(s) in webTA.

Employee Separation or Transfer: In accordance with Title 5, CFR § 550.1008, employees who separate from Federal service or transfer to another Federal agency, will be paid for the positive balance of earned religious compensatory time off at the hourly rate of basic pay in effect when the religious compensatory time was earned. Unused religious compensatory time off cannot be converted to another type of paid time off.

Employees who separate from Federal service or transfer to another Federal agency with a negative balance of used, but not yet earned, religious compensatory time off hours, will incur a financial debt for the negative balance that is subject to debt collection procedures.

Transitional Provisions: Title 5, CFR § 550.1010 provides transitional rules for employees who have either a negative or positive balance of religious compensatory time off as of May 29, 2019, the effective date of the final regulations.

Negative Balance – The 13-pay-period limitation in Title 5, CFR § 550.1006(c), in which employees have to earn religious compensatory time off after using it, will be applied from May 29, 2019, as if this date is the date in which the religious compensatory time off was used.

Positive Balance – Supervisors/managers must confirm and document that the hours earned are connected to one or more specific religious observances requiring the employee's absence from work, based on his/her personal religious belief(s), and provide the employee with an opportunity to direct all unused hours to the future religious observance(s). If the employee does not direct the unused hours, the employee may not earn any additional religious compensatory time off hours until the employee has established a need to earn such time off.

PROCEDURES

Employee Requests

Employees must submit a request through webTA to his/her supervisor/manager to use religious compensatory time off for religious observances. Requests are entered in the Leave Request module and must be made at least 14 days in advance of the religious observance unless there is a sufficiently justified reason for a shorter request period.

Requests to Use Religious Compensatory Time Off Must Include:

- (1) The name and/or description of the religious observance that is the basis of the employee's request to be absent from work in order to meet his/her personal religious requirements;
- (2) The date(s) and time(s) the employee plans to be absent to participate in the religious observances; and

- (3) The date(s) and time(s) the employee plans to perform overtime work to earn religious compensatory time off to make up for the absence.

Requests to Earn Religious Compensatory Time Off

Upon submittal of the request to use religious compensatory time, employees must subsequently request approval to earn religious compensatory time. Requests to earn this time are made through the Premium Pay module of webTA.

Note: In the event that an adjustment to the dates and times of planned overtime work is required due to unforeseen circumstances, the employee must submit, for approval, a revised request to reflect those changes.

Supervisor/Manager Approvals/Denials

Approvals – Supervisors/managers must approve an employee's request to use religious compensatory time off through webTA, unless he/she determines that approving the request would interfere with the organization's ability to efficiently carry out its mission.

Upon approval to use religious compensatory time off, subsequent requests to earn religious compensatory time off are approved through webTA. Supervisors/managers have the flexibility to determine when an employee may earn the time off (within the 13-pay-period time limitation) based on the work requirements of the organization.

Denials – If either type of request (to use or to earn) is denied, the supervisor/manager must document the reason(s) for denial in webTA, as well as provide the employee a written explanation of the denial via email.

Recording of Religious Compensatory Time Earned and Used

All religious compensatory time hours earned must be recorded in webTA under transaction code: 32, Pfx 77, Comp/time/Religious Earned.

All religious compensatory time hours used must be recorded in webTA under transaction code: 60, Comp/time/Religious Used.

REFERENCES: Title 5, CFR Part 550, § 550.103, Title 5, CFR Subpart J as amended by the Office of Personnel Management's final rule published in the *Federal Register*, 84 FR 17931.

OFFICE OF POLICY AND BENEFITS: OPBservices@doc.gov

