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a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) For purposes of this subsection—

(A) The term *overtime compensation* means the compensation required by subsection (a), and

(B) The terms *compensatory time* and *compensatory time off* means hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

[52 FR 2032, Jan. 16, 1987; 52 FR 2648, Jan. 23, 1987]

§ 553.22 "FLSA compensatory time" and "FLSA compensatory time off".

(a) Compensatory time and compensatory time off are interchangeable terms under the FLSA. Compensatory time off is paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime compensation is required by section 7 of the FLSA.

(b) The Act requires that compensatory time under section 7(o) be earned at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by section 7 of the FLSA. Thus, the 480-hour limit on accrued compensatory time represents not more than 320 hours of actual overtime worked, and the 240-hour limit represents not more than 160 hours of actual overtime worked.

(c) The 480- and 240-hour limits on accrued compensatory time only apply to overtime hours worked after April 15, 1986. Compensatory time which an employee has accrued prior to April 15, 1986, is not subject to the overtime requirements of the FLSA and need not be aggregated with compensatory time accrued after that date.

§ 553.23 Agreement or understanding prior to performance of work.

(a) *General.* (1) As a condition for use of compensatory time in lieu of overtime payment in cash, section 7(o)(2)(A) of the Act requires an agreement or understanding reached prior to the performance of work. This can be accomplished pursuant to a collective bargaining agreement, a memorandum of understanding or any other agreement between the public agency and representatives of the employees. If the employees do not have a representative, compensatory time may be used in lieu of cash overtime compensation only if such an agreement or understanding has been arrived at between the public agency and the individual employee before the performance of work. No agreement or understanding is required with respect to employees hired prior to April 15, 1986, who do not have a representative, if the employer had a regular practice in effect on April 15, 1986, of granting compensatory time off in lieu of overtime pay.

(2) Agreements or understandings may provide that compensatory time off in lieu of overtime payment in cash may be restricted to certain hours of work only. In addition, agreements or understandings may provide for any combination of compensatory time off and overtime payment in cash (e.g., one hour compensatory time credit plus one-half the employee's regular hourly rate of pay in cash for each hour of overtime worked) so long as the premium pay principle of at least ''time and one-half'' is maintained. The agreement or understanding may include other provisions governing the preservation, use, or cashing out of compensatory time so long as these provisions are consistent with section 7(o) of the Act. To the extent that any provision of an agreement or understanding is in violation of section 7(o) of the Act, the provision is superseded by the requirements of section 7(o).

(b) *Agreement or understanding between the public agency and a representative of the employees.* (1) Where employees have a representative, the agreement or understanding concerning the use of compensatory time must be between the representative and the public agency either through a collective bargaining agreement or through a memorandum of understanding or other type of oral or written agreement. In the absence of a collective bargaining agreement applicable to the employees, the representative need not be a formal or recognized bargaining agent as long as the representative is designated by the employees. Any