masuda funai

News & Types: Employment, Labor & Benefits Update

WAGE & HOUR – Compensatory Time Off: Mistakes and Solutions

5/9/2013

Practices: Employment, Labor & Benefits

Some companies do not want to pay overtime to their California employees when they work more than 40 hours in a work week or more than 8 hours in a work day. Or, as an alternative to overtime pay, these companies give their employees "comp time." The employees keep track of the time they work and, if they work more than 40 hours, they take an equal amount of time off with pay any time during the year. They just add the comp time to their vacation entitlement.

Those companies do not realize that compensatory time off is only allowed for government workers. Employees in privately-owned companies are not entitled to compensatory time off. Of course, employers can adjust the employee's work schedule during the same work week so that the employee does not work more than 40 hours. Instead of giving employees compensatory time off, employers are required to pay employees overtime pay according to federal and applicable state laws. In most states, the amount of overtime pay equals 1.5 times the employee's regular rate of pay for every hour worked after 40 hours are worked in a work week. Employees who have been receiving comp time may file suit against their companies for the unpaid overtime pay.

The Republican House of Representatives is trying to fix this problem and give the same rights to private-sector employees that are enjoyed by government workers. On April 17, 2013, the House Education & the Workforce Committee approved H.R. 1406, which is called the Working Families Flexibility Act of 2013. Although the bill may face resistance in the Democratically-controlled Senate, it may be difficult for senators to vote against flexibility for working families. The Republicans say that they are trying to help employees juggle the competing burdens of family and work. Democrats say that the bill is an attempt to attack the 40-hour work week and the requirement that companies pay overtime wages to employees.

Under the Act, employees in private-sector companies would have a choice to earn wages at the overtime rate or take paid time off in lieu of the overtime wages. The amount of paid time off would equal 1.5 times the hours worked over 40 hours in a work week. Companies would not be allowed for force employees to take the time off in lieu of receiving overtime pay. Instead, employees would agree in writing and voluntarily take paid time off. Employees could accrue up to 160 hours each year and could receive the cash equivalent of the accrued paid time off at any time or at the end of each year.

What should you do? Companies should stop giving its employees comp time off and should be paying overtime pay according to federal and applicable state laws. If a company has been giving its employees comp

©2026 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.

time, it should consider how to correct the situation and whether and how to compensate the employees for the overtime pay they have not received.

©2026 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.