

FLSA-464

September 14, 1992

This is in response to your inquiry concerning the use of compensatory time off that has been accrued pursuant to §7(o) of the Fair Labor Standards Act (FLSA). You ask whether a public agency may require its nonexempt employees to use their previously accrued FLSA compensatory time by scheduling them to take such time off as directed.

As you know, FLSA compensatory time off is paid time off which is earned and accrued by an employee in lieu of immediate cash payment for statutory overtime hours. As a condition for use of compensatory time in lieu of overtime payment in cash, an agreement or understanding must be reached prior to performance of the work. That agreement or understanding may include provisions governing the preservation, use or cashing out of compensatory time so long as these provisions are consistent with §7(o). See §553.23 of Regulations, 29 CFR Part 553.

Thus, it is our position that a public employer may schedule its nonexempt employees to use their accrued FLSA compensatory time as directed if the prior agreement specifically provides such a provision, and the employees have knowingly and voluntarily agreed to such provision freely and without coercion or pressure. See §553.23(c).

Absent such an agreement, it is our position that neither the statute nor the regulations permit an employer to require an employee to use accrued compensatory time. However, as indicated in §553.27, accrued compensatory time may be paid in cash at any time. It appears that "cashing out" accrued compensatory time could achieve the objective of concern.

We trust that the above information is responsive to your inquiry.

Sincerely,

Karen R. Keesling
Acting Administrator