

# Can we pay hourly staff comp time instead of OT?

**Q. I've heard conflicting answers: Is it legal for our company to pay our hourly employees comp time instead of paying time-and-a-half for overtime worked? — D.L., New Mexico**

**A.** No. The federal **overtime labor law** requires all nonexempt employees to receive an overtime premium of one-half the regular rate of pay for all hours worked in excess of 40 in a given workweek.

To save on wages, some employers erroneously believe they can compensate overtime with comp time off. In other words, instead of paying an employee time-and-a-half for overtime worked, the employee would be paid the regular straight-time rate and receive an additional half-hour of paid time off to be banked and used in the future. Under the Fair Labor Standards Act (FLSA), this practice is illegal for private employers. It interferes with employees' rights to be paid their overtime premium.

For state and local governments, the FLSA has a specific provision that allows for providing comp time in certain circumstances, such as where it is provided for in a collective-bargaining agreement or other agreement between the employer and employee.