



**Audit Report
Comp Time Policy for Exempt Employees
Follow-Up
October 30, 2018**

**City Auditor's Office
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Purpose and Scope

This report follows up the November 2017 audit report which addressed the City's administration of Compensatory Time for Exempt Employees. In the remainder of this report, such time is referred to as Exempt Comp Time, or "ECT"; that is, time off awarded to those employees who are exempt from overtime pay. The objective of the follow-up was to determine the status of planned actions in response to Audit Recommendations, and to document any impact of delayed implementation of policy changes.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This report is intended for the use of the City Manager's Office, City Council, and the Human Resources Department.

Conclusion – October 2018

Compensatory Time excesses continued in calendar year 2018.

Audit Results – October 2018

Policy changes addressed in the 2017 audit report need to be completed. Currently:

1. Comp Time and Eligibility remain inconsistently applied.
2. Department Directors and Deputies have continued to accumulate and use significant comp time.
 - Twenty-nine Directors/Deputy Directors out of 72 tested (40%) earned more than 40 hours in Calendar Year 2018 through September 30, with hours ranging between 46 and 238.
 - During Calendar Year 2018 through September 30, 45 Directors/Deputy Directors (63%) used Comp Time, with 28 using over 40 hours, ranging up to 234.
3. Sick Leave Adjustment accruals have risen an average 100 hours for more than half the City's Department Directors and Deputies.

Background

The City employs approximately 8,000 workers. About 80% are hourly (non-exempt from Overtime rules and regulations and therefore eligible for overtime pay), while 20% are “Exempt,” i.e., not eligible for overtime pay – largely white collar and managerial staff. While some departments (or divisions) may keep separate records, approximately 60% of Exempt City employees are recording ECT in the City’s PeopleSoft system. Among departments, ECT usage varies from 0% to nearly 100%. The Engineering & Property Management Department (E&PM) does not track ECT in PeopleSoft, except for one small section within the department. E&PM’s data (from its own internal system) was obtained at the end of the review, and was found to have similar results as the rest of the City. No major outliers were noted.

The City’s HR Standards and Guidelines (effective December 1, 2012) address Comp Time for both Exempt and Non-exempt employees, but also allows each department to develop its own rules and administration. Some employees accumulate significant time which is later used in place of vacation or sick leave.

Accumulated ECT is not eligible for payout upon separation and can only be used at the discretion of a supervisor, although high level managers accumulate and use ECT without any oversight (i.e., without higher level approval), or apparent limits. Most hourly (“non-exempt”) employees are generally allowed to accumulate 240 hours CT (public safety employees can accumulate 480 hours), before payout as overtime at time and a half is required, per FLSA law.

The HR Guidelines do not address limits for exempt employees. The substitution of ECT (or CT for non-exempts) can increase Sick Leave Balances, eventually resulting in higher payouts at retirement, along with increased Service Time (sometimes used to achieve retirement thresholds, up to 12 months sooner for a 19-20 year employee). That is, 20% of the employee’s sick leave balance (up to 43.5 days) can be paid out at separation, with the remainder added to the employee’s service time, used to calculate lifetime pension payments.

Following an HR study and recommendation to bring the City in line with the majority of NC municipalities’ practices, a leave transfer policy was put in place. Effective January 1, 2016 (policy approved August 15, 2015), the City began to transfer excessive unused Vacation to Sick Leave. The transfers are termed “Adjusted Sick Leave.” (Adjusted Sick Leave was an existing term, but had been much more limited in use – usually at the beginning of employment with the City.) In recent years, such leave has been used to address the leave constraints resulting from ERP (MUNIS) implementation and hosting the Democratic National Convention.

See Appendix for a comparison of ECT policies among the City’s departments.

Conclusion – Original (November 2017)

Comp Time practices by executives and other exempt employees vary widely among departments. Some departments apply a liberal interpretation to the City's HR Standards and Guidelines. Therefore, consistent Comp Time standards are required for all City departments.

Summary of Findings and Recommendations – Original (November 2017)

Human Resources' Standards and Guidelines Rule III, Section 9.2 addresses Compensatory Time for Employees Exempt from FLSA, specifically, "when an exempt employee's work schedule significantly exceeds the normal 40-hour workweek..." However, some department heads and others accrue CT in half-hour increments on a regular basis.

While some departments tightly control the accumulation and use of CT, about 4% of exempt employees accumulated over 240 hours CT through FY17. Two percent exceeded 480 hours. Some employees are limited to using 16 hours CT in a week, while others use CT for an entire week, or more.

Human Resources should develop and enforce a Citywide Comp Time Policy to address the following:

1. Definition of Comp Time and Eligibility
2. Maximum Accumulation and Usage
3. Impact on Pensions

Audit Findings and Recommendations

1. Definition of Comp Time, and Eligibility – Comp Time and Eligibility remain inconsistently applied.

Throughout the City, ECT recording (accumulation and usage) varies from none to all exempt employees within a department. The City's HR Standards and Guidelines state at Rule III, Section 9.2, Compensatory Time for Employees Exempt from FLSA:

Employees exempt from the overtime provision of FLSA are paid on a salaried basis for performance of their job duties and are not eligible for overtime pay, except (on call and call-back).

When an exempt employee's work schedule significantly exceeds the normal 40-hour workweek, the department may, if it so desires, award compensatory time to the employee. Compensatory time off for exempt employees, however, is typically not granted on an hour-for-hour basis.

Based upon PeopleSoft records, many exempt employees are accruing ECT outside the general guidelines outlined above. That is, auditors made the following observations:

- ECT is not limited to periods when an employee's work schedule significantly exceeds the normal 40 hour workweek.
- Often, ECT appears to be accrued hour-for-hour. Records do not allow complete verification; however, the accruing of ECT in increments of 0.5 hours, or 1-2 hours in a week suggests that no determination of significance has been applied.
- For Department Heads, the approval of ECT is not being documented or approved (other than administratively).

Recommendation

The prior report recommended, and HR agreed, that Department Directors and Deputies would be excluded from earning Comp Time. In addition, the definition of CT would be clarified to accrue only after 45 hours of work in a week.

Human Resources Update of Status

HR plans to distribute a draft policy update by November and finalize it by year-end. The new policy will clarify eligibility guidance for all City employees.

2. Maximum Accumulation and Usage – Department Directors and Deputies have continued to accumulate significant comp time.

- Twelve of 72 accumulated over 240 hours comp time through 9/30/18
- Eight of those accumulated over 480 hours comp time through 9/30/18

The Citywide policy does not address maximum CT accumulations for exempt employees. The non-restrictive ECT policies in some departments have resulted in many employees taking ECT in place of vacation, and subsequently transferring excess vacation to sick leave. (See finding #3 below for discussion of the impact on pensions and separation payouts.) Auditors made the following observations:

Prior Audit Report

- Accumulated Comp Time – 28 exempt employees had accumulated over 480 hours as of 5/26/17.
- Comp Time Usage – During FY16, 77 exempt employees used 160 hours or more Comp Time.

Follow-Up 2018 Audit Result

Accumulated Comp Time

- Twenty-nine Directors/Deputy Directors out of 72 tested (40%) earned more than 40 hours in Calendar Year 2018 through September 30, with hours ranging between 46 and 238.
- Seven Directors/Deputy Directors (10%) accumulated over 480 hours as of mid-September 2018. Current balances range between 525 and 2,639 hours.

Comp Time Usage

- During 2018 through September 30, 45 Directors/Deputy Directors (63%) used Comp Time, with 28 using over 40 hours, ranging up to 234.

Recommendation

The prior report recommended, and HR agreed, that a reasonable limit for compensatory time accrual and usage should be set. (As noted in finding #1, Department Directors and Deputies would not be eligible.)

Human Resources Update of Status

A new policy will address accrual and usage limits and is expected to be put in place by year-end.

3. *Sick Leave Adjustments and Impact – Sick Leave Adjustment accruals have risen an average 100 hours for more than half the City's Department Directors and Deputies.*

The use of ECT instead of Vacation in recent years, along with the Adjusted Sick Leave Policy allowing unused vacation to be transferred to Sick Leave, has resulted in some large Sick Leave increases. These increases will eventually result in higher annual leave payouts at separation or retirement, along with increased Service Time, which increases pension payments.

In addition, separation and retirement payouts for unused annual leave (when Comp Time has been substituted for vacation) have been impacted. For example, one retiree and one separated employee who banked substantial Comp Time leading up to their departures in 2018 resulted in the following:

- ✚ 234 hours comp time used in eight months preceding retirement increased payout by \$15,364 for unused annual leave, which totaled \$44,009 for 670 hours accumulated vacation.
- ✚ 142 hours comp time used in seven months preceding separation increased payout by \$13,444 for unused annual leave, which totaled \$36,048 for 380 hours accumulated vacation.

Adjusted Sick Leave (ASK) had limited usage (e.g., new hires) until the policy was expanded in 2015. In FY14 and FY15, ASK impacted fewer than 200 employees each year. The number of employees benefitting has grown to over 1,300 in FY18. The two tables following detail the growth by A) Exempt and Nonexempt employees, combined; and B) Exempt employees only.

A. Exempt and Nonexempt Employees

Cumulative Adjusted Sick Leave Hours		
Year	Employees	Total Hours
FY14	185	14,420
FY15	177	10,064
FY16	1,104	63,183
FY17	1,214	70,929
FY18	1,322	104,150

B. Exempt Employees

Cumulative Adjusted Sick Leave Hours		
Year	Employees	Total Hours
FY14	27	5,180
FY15	30	5,119
FY16	396	22,209
FY17	432	36,316
FY18	472	43,841

For FY18, 38 of the 72 Directors/Deputy Directors (53%), accrued 3,849 ASK hours, an average of over 100 hours for each of the 38 with ASK.

Recommendation

The City should consider the impact of Sick Leave upon pension obligations. With the 850% growth of ASK for Exempt Employees since FY14, the City needs to determine whether limits should be set. (That is, the annual ASK could be capped, along with initial amounts available at hiring.) Finance and Legal staff should determine whether there are any disclosure requirements or unintended consequences which could arise.

Human Resources Response

The new policy should have the effect of limiting transfers of annual to sick leave.

Appendix - Summary of Exempt Comp Time Policies			
Department	Comp Time Hours Begin Accumulating	Maximum Number of Hours Carried Forward (Blank if not addressed in Department/Division Policy)	Maximum Number of Comp Time Hours Taken Consecutively
Aviation	40	Unlimited	40
CATS	45	-	-
CBI	40	-	-
CDOT	42	Unlimited; 120 carried forward to next FY	24
City Attorney	45	Unlimited	4 hours per day
CLT Water	42	40; 120 max at any time	-
CMO	40 (30 minutes for every hour worked)	40 (recommended)	16 (per week)
CMPD	45 (w/exceptions)	-	24 (w/exceptions)
E&PM	42	40 at any time	24 per week
Economic Development	40	-	-
Finance	40	Unlimited	-
Fire	N/A	N/A	N/A
Fleet	40	80	-
Housing & Neighborhood Services	40	-	-
HR	40	-	-
I&T	40	80 (quarterly roll-back)	As accrued
Planning	40	40	16
Risk Management	40.5	40	-
Shared Services	40	80	-
Strategy & Budget	40 (50% for every hour worked unless Memorial Day to Labor Day then 100%)	-	-
Solid Waste Services	45 (1 for every 5 worked)	40 (not currently following); 120 max at any time	24