

Human Resources

By Stephanie Ramsey

HR

Reality Check

Yep, the Stories are True!



SCENARIO: Patterson-Mason Funeral Service is a multi-location business located in the northeastern United States. The business is owned by Frank Patterson and Adam Mason. Between the various locations, the business serves over 700 families annually and employs more than 20 staff members.

The business has eight funeral directors, all of whom are identified as nonexempt employees. However, rather than paying overtime, it allows funeral directors to take comp time at a point during the calendar year that is convenient to them. The employees seem quite happy with the arrangement as it allows them to bank additional time for either vacation or personal days.

Recently, one of their funeral directors, Pam, asked if she could roll over her unused comp time into the next year as she wasn't sure she could take the time before the end of the year. Frank and Adam told Pam that they did not wish to have the time accrue beyond the end of the year. Pam became quite agitated, indicating it was not fair to her as her work schedule would not allow her to take the time before the end of the year. Frank and Adam were in a quandary. *What should they do?*

What are the rules? Compensatory time (comp time) is defined by the U.S. Department of Labor as paid time off from work by an employee rather than cash payment for overtime hours worked.

The DOL does not permit private sector employees to use such forms of compensation for nonexempt employees (employees who are eligible to receive overtime). In fact, the Fair Labor Standards Act specifically limits the use of comp time for the private sector. Whether paid by salary or hourly, nonexempt employees should be paid for any overtime worked in a payroll period.

It is important to note that neither the DOL nor the FLSA prohibit private employers from using comp time related to exempt employees (employees who are not eligible for overtime). Exempt employees are paid a salary regardless of how many hours they work. At the employer's discretion, they may offer an exempt employee comp time (hour for hour) for the hours beyond 40 that they have worked in a week, however, they are not obligated to do so.

Did the employer make any mistakes? Unfortunately, yes, the employer did. Assuming Frank and Adam have their funeral directors properly classified as nonexempt employees, they are not qualified to receive comp time in lieu of being paid overtime for any hours worked over 40 hours in a work week. This can lead to a significant problem for their business should the DOL become involved. While Frank and Adam developed a program they believed was of benefit to their employees, they were inadvertently violating federal and state law.

Resolution of the issue: Frank and Adam should immediately stop their practice of using comp time to make nonexempt

employees whole for any overtime worked.

They should go through their payroll records for the year and pay all nonexempt employees any overtime that they have accrued and earned. This will resolve the issue with Pam, as she will be paid for the overtime that she has earned. Frank and Adam should explain to their employees that unfortunately nonexempt employees cannot be given comp time in lieu of pay for overtime under federal law.

Despite the restriction, there is a

way that Frank and Adam can effectively manage their overtime cost by adjusting employee schedules appropriately. For example, take a standard payroll period without overtime:

Now let's look at a payroll period that had overtime: (*see chart on next page*)

Note that in the first week of the payroll period that there was four hours of overtime. The employee is paid 1.5 times their hourly rate for those four hours. However, in the second week of the payroll period, the business adjusted the

Regular Payroll		
John Smith	Hourly Rate	\$10
Week One	Hours Worked	Rate/Day
Monday	8	\$80
Tuesday	8	\$80
Wednesday	8	\$80
Thursday	8	\$80
Friday	8	\$80
Saturday	0	\$0
Sunday	0	\$0
Total		\$400
Week Two		
Monday	8	\$80
Tuesday	8	\$80
Wednesday	8	\$80
Thursday	8	\$80
Friday	8	\$80
Saturday	0	\$0
Sunday	0	\$0
Total		\$400
Bi-Weekly Paycheck		\$800

hours of the employee to only work two hours one day. The result is that for the payroll period, the employee worked 80 hours – thus the business was able to control its overtime expense.

This type of time management only works by adjusting an employee’s schedule in the same payroll period. If such an adjustment cannot occur in the

same payroll period, then the employee is simply paid the overtime and the business accrues the additional cost.

Should Frank and Adam desire to use comp time for their exempt employees, they can develop a policy that is well written and consistently applied both in terms of when it is offered and who will qualify to receive it.

Preventive measures: Patterson-Mason Funeral Service should have an employee handbook with policies that addresses the issues that created this problem such as:

1. Exempt versus nonexempt employee status.
2. The definition of overtime and when it occurs.
3. Compensatory time (if the company is going to provide it) and who is qualified to earn it.
4. Payroll periods and pay schedule.
5. Time cards and/or time tracking of employees that may incur overtime.

Payroll issues, such as exempt/nonexempt status and overtime, can be a complex issue for a funeral business. If you are not certain how to classify your employees or when your employees should be paid overtime, seek the advice of a professional. Mistakes made by business owners in this area can be extremely costly. •

Payroll with overtime/time management		
John Smith	Hourly Rate	\$10
Week One	Hours Worked	Rate/Day
Monday	8	\$80
Tuesday	8	\$80
Wednesday	8	\$80
Thursday	8	\$80
Friday	8	\$80
Saturday	4	\$60
Sunday	0	\$0
Total		\$460
Week Two		
Monday	8	\$80
Tuesday	2	\$20
Wednesday	8	\$80
Thursday	8	\$80
Friday	8	\$80
Saturday	0	\$0
Sunday	0	\$0
Total		\$340
Bi-Weekly Paycheck		\$800