

# WEST VIRGINIA CODE: §18b-7-10

## **§18B-7-10. Compensatory time off in lieu of overtime; written agreement; other conditions.**

(a) Notwithstanding any provision of this code to the contrary, in lieu of overtime compensation, employees of higher education organizations may receive compensatory time off at a rate not less than one and one-half hours for each hour of employment. Employees may receive compensatory time only under the following conditions:

(1) The time is awarded pursuant to a written agreement between the employer and the employee arrived at before the work is performed. A written agreement may be modified at the request of the employer or employee, but under no circumstances may changes in the agreement deny an employee compensatory time already acquired;

(2) The time is recorded in the employer's record of hours worked; and

(3) The employee has not accrued compensatory time in excess of the prescribed limits.

(b) An employee may accrue up to four hundred eighty hours of compensatory time if the employee's work is a public safety activity, an emergency response activity or a seasonal activity. An employee engaged in other work may accrue up to two hundred forty hours of compensatory time. An employee who has accrued four hundred eighty or two hundred forty hours of compensatory time, as the case may be, shall be paid overtime compensation for additional hours of work. If compensation is paid to an employee for accrued compensatory time, the compensation shall be paid at the regular rate earned by the employee at the time the employee received the payment.

(c) If employment is terminated, an employee who has accrued compensatory time pursuant to this section, shall be paid for the unused compensatory time at a rate of compensation not less than the higher amount calculated using one of the following formulas:

(1) The average regular rate received by the employee during the first three years of the employee's employment; or

(2) The final regular rate received by the employee.

(d) An employee who has accrued compensatory time as authorized by this section, and who has requested the use of compensatory time, shall be permitted by the employer to use this time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operation of the employing agency. Compensatory time must be used within one year from the time it is accrued.