

SUPREME COURT ALLOWS MUNICIPALITIES TO COMPEL USE OF ACCUMULATED COMP TIME

The United States Supreme Court, in a 6-3 decision, recently upheld municipalities' authority to require employees to use accrued compensatory time ("comp time") even where there is no agreement between the employer and employees on this point. *Christensen v. Harris County*, No. 98-1167 (May 1, 2000).

First, a brief refresher on comp time. Under the Fair Labor Standards Act (FLSA), a governmental employer may establish a comp time system by agreement with its employees. Under such a system, employees may be required to accept comp time in lieu of overtime pay for any overtime hours worked. One and a half hours of comp time must be given for each hour of overtime worked. Once accrued, comp time is never lost. The employer must allow employees to use their comp time within a reasonable time after they request it, so long as the use of the comp time does not unduly disrupt the employer's operations. The FLSA has a cap on the number of hours of comp time that an employee can accrue (240 for regular employees, and 480 for public safety employees and those engaged in seasonal work). After the maximum is reached, the employee must be paid overtime in cash. If the employee leaves employment for any reason, unused comp time must be given to the employee, at his or her rate of pay, at the time of separation.

These factors make it easy to see why the County in the *Christensen* case wanted to set a policy requiring the use of comp time. The County was concerned that it lacked the funds to pay overtime to employees after they reached the cap on comp time, or to pay employees who left with a large reserve of comp time. Therefore, the County established a policy under which supervisors set a maximum number of hours of comp time that could be accumulated. When an employee's stock of hours approached the maximum, the employee was asked to reduce the accumulated time. If the employee did not do so, the supervisor could order the employee to use the comp time at particular times.

A group of deputy sheriffs of the County sued, claiming that this arrangement violated the FLSA. Although the sheriffs had already agreed to *accept* comp time in lieu of overtime pay, as required under the FLSA, they argued that they could not be required to *use* their comp time at particular times unless they had additionally agreed to such an arrangement with the County.

A majority of the Supreme Court disagreed. The Court based its opinion on the FLSA, and in so doing it declined to follow a contrary interpretation in an opinion letter from the Department of Labor. The Court concluded that the wording of the FLSA does not prohibit a governmental employer from compelling employees to use accrued comp time at any time. In other words, the employer may tell the employee to take time off from work with full pay.

As mentioned above, the use of comp time as a substitute for overtime pay must be agreed to by the employer and employees. The Court also clarified that this agreement need not be a formal one. The Court said, "Such an agreement or understanding need not be formally reached and memorialized in writing, but instead can be arrived at informally, such as when an employee works overtime knowing that the employer rewards overtime with compensatory time." Nevertheless, the better practice is for comp time agreements to be in writing, as part of the employer's personnel policies. Thus when a new employee is hired, he or she takes the job knowing that comp time is a condition of employment.

If you, as an employer, want to use the authority given by this case to compel the use of comp time under certain circumstances, that policy should also be clearly stated in your personnel policies. In setting a comp time policy, think about the history of accrual of comp time by employees in your town in light of your resources, and try to fashion a policy that is fair both to you and the employees. Of course, if you are operating under a collective bargaining agreement, involve the union in any changes to your policy.