

## employee relations

# BULLETIN

March 28, 2000

**To: Heads of All Departments  
Departmental Personnel Officers**

**Subject: FAIR LABOR STANDARDS ACT UPDATE (NON-SWORN EMPLOYEES)**

Recently this Office has received numerous inquiries regarding Fair Labor Standards Act requirements. This Bulletin will serve as a reminder of certain aspects of the Act with respect to the workweek and record keeping.

The Fair Labor Standards Act (FLSA) establishes requirements regarding employee workweeks, hours of work, regular rate of pay, and related record keeping for non-exempt employees. *Non-exempt* (hourly) employees are covered by the overtime provisions of the Act. *Exempt* (salaried) employees are not covered by its overtime requirements.

### **OVERTIME LIMITS**

The Act requires all time worked over 40 hours in a workweek by non-exempt (non-safety) employees to be either compensated in cash at one and one half times regular rate of pay, or booked at time and one half. However, City ordinances provide a more generous standard than FLSA by counting all compensated time, including vacation, holidays, sick leave etc. for purposes of determining overtime. FLSA limits the number of hours that can be accumulated on the books. Employers may set their own lower limits; City policy, (established in 1986 and still valid) sets a limit of 80 hours.

### **WORKWEEK**

FLSA defines a workweek as a regular recurring period of 168 consecutive hours. **A workweek need not be the same as the calendar week, nor need it correspond to a payroll period. It may begin and end on any day of the week and at any hour of the day.**

*It is the responsibility of each department to establish workweeks for all non-exempt employees in writing. A single workweek may be established for all non-exempt employees of the department, or different workweeks may be established for different employees or groups of employees. Once the beginning of an employee's workweek is established, it remains fixed. The designated workweek for an employee may only be changed if the change is intended to be permanent and not designed to evade overtime*

requirements of the FLSA. (The Department must maintain a written record of the FLSA workweek for each employee.)

For City employees who work a typical 40 hour schedule (5/40 or 4/10) workweek will correspond to the calendar week, i.e., 12:01 a.m. Sunday through 12 midnight Saturday.

**9/80 Modified Work Schedule** -- Keeping in mind that every workweek stands alone and can begin at any time and on any day of the week, the 9/80 schedule (working 9 days and 80 hours in a two week period) can be maintained without incurring any overtime liability by adopting the following type of work schedule.

|          | <u>Sun.</u> | <u>Mon.</u> | <u>Tues.</u> | <u>Wed.</u> | <u>Thurs.</u> | <u>Fri.</u>   | <u>Sat.</u> | <u>Hours</u> |
|----------|-------------|-------------|--------------|-------------|---------------|---------------|-------------|--------------|
| Week One |             | 9           | 9            | 9           | 9             | 4             |             | 40           |
| Week Two |             | 9           | 9            | 9           | 9             | /4 (week two) | OFF (RDO)   | 40           |

Separate workweeks must be established for each 9/80 configuration that a department uses. Once a workweek is established for an employee it becomes fixed. The 8 hour workday is split evenly between week one and week two; therefore, it must also be split based upon the employee's start time and lunch schedule. For example, an employee who starts work at 8:00 a.m and has a one hour lunch ends the first workweek at 12 noon and begins week two at 1:00 p.m; the workweeks split at 11:00 for the employee who starts work at 7:00 a.m. For ease of record keeping, the 8 hour day should be the same day of the week as the employee's day off. Also, the lunch break must be taken at the specified time of day when the split occurs. Management should not permit temporary changes of an employee's day off (to accommodate management or the employee) if doing so will result in an employee working in excess of 40 hours in his/her designated workweek. In the example above, changing a day off within the workweek, i.e., from Friday to any other day in Week Two would result in additional overtime for the employee under FLSA in Week Three (not shown). Similarly, changing the day off between weeks in the pay period would incur overtime liability in Week Three. However, the overtime liability is eliminated if the employee takes an equal or greater amount of other compensated time off during Week Three. (This requires strict adherence to the time-off request by the employee and the employer in Week Three.)

When a holiday falls on the employee's RDO, the RDO can be moved to another day within the week without incurring overtime liability.

**28 Day Deployment Period** -- Certain civilian employees in the Police Department are scheduled to work a 28-day deployment period and have a unique workweek pursuant to FLSA Section 7 (b)(2) [29 USC Section 207 (b)(2)].

## RECORD KEEPING

The FLSA requires every employer to make and preserve records of employees' wages, hours and other conditions of employment.

The Department of Labor (DOL) regulations specify the information that must be kept by employers for each employee. There is no requirement that this information be recorded in any particular form. The required information can be maintained in either employee personnel files, payroll records, work unit time records, or a combination of these. The DOL requires that FLSA mandated records which are maintained in a central office, other than the place of employment, be available for that employee upon seventy-two (72) hours notice from the DOL.

### ***Information required for non-exempt (hourly) employees***

Employers must maintain records containing the following information for each non-exempt employee:

1. Name;
2. Home address;
3. Date of birth if under 19;
4. Sex and job classification;
5. *Time of day and day of week on which employee's work week begins;*
6. Regular hourly rate of pay for any week when overtime is worked and overtime compensation due, together with the basis on which wages are paid and the amount of each payment;
7. Hours worked each workday and each workweek;
8. Total daily or weekly straight-time earnings or wages;
9. Total overtime excess compensation for the workweek;
10. Total additions to or deductions from wages paid during a pay period along with the amounts, nature and dates of said additions or deductions;
11. Total wages paid each pay period; and
12. The date of payment and the pay period covered by the payment for regular and overtime wages.

*Note: All of the above are maintained by the Controller, with the exception of No. 5. That record must be maintained by the department.*

### ***Preservation of records***

The following documents must be preserved for three (3) years:

- Payroll records; *(maintained by Controller)*
- Collective bargaining agreements and all amendments or additions thereto; *(maintained by CAO)*
- Employment contracts; if any, *(NA)*
- Certificates or notices prepared in regard to the application and implementation of the FLSA. *(CAO and departments)*

The following documents must be preserved for two (2) years:

- Wage rate tables or salary schedules; *(maintained by Controller)*
- Records of additions to or deductions from wages paid. *(maintained by departments and Controller)*
- Basic employment, earnings records and work time schedules which includes daily starting and stopping times of employees; *(maintained by departments)*

### ***Posting requirements***

Departments must display FLSA notices pertaining to the minimum wage and maximum hour requirements of the act in conspicuous places where employees work. Failure to post such notices can subject an employer to additional liability if violations of the Act are found to occur. Please contact the CAO's Employee Relations Division to obtain additional Notices (Sally Choi at extension (213) 485-3503).

### **EXEMPT SALARIED EMPLOYEES**

Departments are reminded of the requirement of the FLSA that salaried exempt employees (see appropriate MOUs for definitions) must be paid for a full workweek. Such employees can only be suspended without pay in increments of a full workweek (40 hours), unless the suspension is as a result of violation of a major safety rule. Failure to adhere to this requirement can jeopardize the exempt status of all employees in the class of the suspended employee and result in a requirement to pay overtime. This does not affect the ability of a Department to require an exempt employee to use accrued sick leave or vacation time to cover absences of a less than a full workweek.

Salaried employees, with the permission of their supervisors are allowed absences during the work day without partial day deductions. Such absences can be for any purpose, and

the exact purpose need not be disclosed by the employee. However, public employers may require salaried employees to be accountable for their time by requiring employees to work specific hours, and to record his or her time worked including compensated absences.



CITY HALL  
LOS ANGELES, CALIFORNIA 90012  
(213) 485-3311

OFFICE OF THE MAYOR

TOM BRADLEY  
MAYOR

November 22, 1985

To: Honorable Members of the City Council  
Heads of All Departments of City Government

#### FAIR LABOR STANDARDS ACT

Congress has passed and the President has signed a bill that significantly reduces the impact of the Fair Labor Standards Act (FLSA) on state and local governments. Key features of the legislation are:

- \*Establishes April 15, 1986 as the effective date for application of FLSA to state and local governments, with no liability before that date.
- \*Permits compensatory time off for overtime worked.
- \*Eliminates most potential joint employment and voluntary programs.

The attached League of California Cities bulletin provides additional details on legislation.

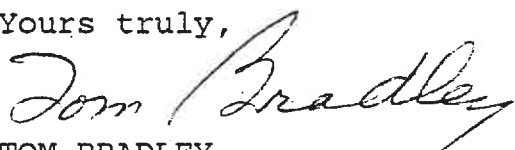
I want all department heads to know that I am pleased with your willingness to cooperate during the past months as we have worked with Congress and other interested parties in an effort to resolve many of our FLSA problems. I believe that many of you have found during this period that overtime liabilities can be reduced without impairing City operations. I would like to see that effort continue. Therefore, I am issuing the following instructions regarding civilian employees:

Honorable Members of the City Council  
Heads of All Departments of City Government - 2

Departmental Instruction--Civilian (Except Water & Power)

1. The new FLSA amendment permits a return to the use of compensatory time off (within limitations) as an alternative to cash payments. Before City departments completely return to former practices, I want to review your individual plans to reduce all overtime usage.
2. Based on your experience since July with all cash compensation for overtime worked by non-exempt employees, prepare a plan for non-exempt overtime utilization for the remainder of the fiscal year. Use the attached form plus any appropriate narrative. The plans are to be submitted to the City Administrative Officer by December 6, 1985.
3. Pending receipt and review of the above material and my further instruction to you, departments are authorized for the next 60 days to permit accumulations not to exceed 40 hours of compensatory time for non-exempt employees.
4. Departments are further instructed to proceed with implementation of FLSA workweeks and record keeping for non-exempt employees. The time between now and April 15, 1986 will enable us to work out problems as they arise.
5. Additional instructions will be issued by the City Administrative Officer as the Department of Labor prepares regulations based on the new legislation.
6. For police officers, firefighters, and paramedics, current practices will continue, pending outcome of the labor negotiations with the unions.

Yours truly,



TOM BRADLEY  
Mayor

Attachments

NON-EXEMPT OVERTIME  
(Estimated)

Department/Bureau \_\_\_\_\_

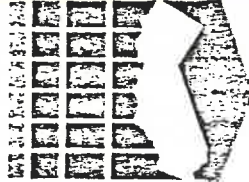
|                        | <u>Overtime<br/>Hours<br/>Worked</u> | <u>COMPENSATION</u>    |                       |
|------------------------|--------------------------------------|------------------------|-----------------------|
|                        |                                      | <u>Cash<br/>Hours*</u> | <u>CTO<br/>Hours*</u> |
| 1984-85                | _____                                | _____                  | _____                 |
| 1985-86<br>July - Nov. | _____                                | _____                  | _____                 |
| 1985-86<br>Dec. - June | _____                                | _____                  | _____                 |

\*Based on number of hours worked. Do not expand to time and one-half.





California Cities Work Together



# LEGISLATIVE BULLETIN

## League of California Cities

1400 K Street • Sacramento 95814 • (916) 444-5790

#37-1985

November 1, 1985

### REMINDER

#### BRIEFING ON LEGISLATIVE IMPLEMENTATION

Thursday, Nov. 7, 1985  
Holiday Inn, Long Beach Airport

Friday, Nov. 8, 1985  
Hyatt Hotel, Oakland Airport

\*\*\*\*\*FEDERAL ACTIVITIES\*\*\*\*\*

1. Fair Labor Standards Act Compromise Approved.
2. Medicare. Status Unchanged.

\*\*\*\*\*

1. Fair Labor Standards Act Compromise Approved. A Conference Committee of the House and Senate has approved the compromise legislation referred to in a special League Bulletin of October 11, 1985. The two principal differences that had to be ironed out by the Conference Committee were a cap on compensatory time for miscellaneous employees and the anti-discrimination section of the legislation. While Senator Pete Wilson was not a member of the Conference Committee, we are advised that he was its most active participant in making certain that the compromise was essentially the same as that agreed upon by the Senate, and he was able to persuade the members to increase the 180 hour cap for miscellaneous employees to 240. Both the House and Senate are expected to send the measure to the White House today or early next week at the latest. The White House has indicated the President will approve the bill. The application of FLSA to public agencies is postponed until April 15, 1986.

The compromise supported by all national organizations of state and local officials and labor unions provides:

1. Compensatory Time.

- a. Comp time permitted at the premium rate of 1-1/2 in lieu of paid overtime.
- b. Collective bargaining agreement may include comp time in lieu of paid overtime at 1-1/2 premium rate.
- c. Current collective bargaining agreements providing comp time at less than 1-1/2 premium rate must be increased to 1-1/2 after April 14, 1986.
- d. Comp time is a legal liability of the employing jurisdiction and upon termination of employment must be paid in cash.

- e. Comp time ceiling for public safety, emergency response or seasonal employees 480 hours of compensatory time. All other employees 240 hours.
  - f. A request for use of comp time must be granted within a reasonable period so long as it does not interrupt agency operations.
2. Joint Employment, Mutual Aid and Substitution.
- a. Special detail work by safety employees considered separate employment even if primary employer approves the job and collects compensation to be paid to employee.
  - b. In cases in which full-time state or local employees on an optional basis work part-time occasionally and sporadically in a substantially different capacity from their primary employment in the employing jurisdiction, the two jobs shall not be treated as one for the purposes of determining overtime liability under the FLSA. Secretary of Labor must define occasional and sporadic and substantially different by March 15, 1986.
  - c. Local employee may serve as a volunteer in another jurisdiction regardless of the existence of a mutual aid agreement.
  - d. Public safety officers with the employer's approval may trade shifts without violating the overtime provisions of FLSA and employers do not have to keep records of the hours of the substitute work.

3. Volunteers.

Persons who volunteer services will not be deemed to be employees even if paid reasonable expenses and a nominal fee. DOL required to promulgate appropriate level of expenses and fees not later than March 15, 1986. However, an employee cannot volunteer to perform the same type of services for the same employer.

4. Effective Date and Retroactivity.

- a. FLSA not to apply to traditional employees until April 15, 1986 except that the actual payment may be delayed until August 1, 1986 before penalty imposed.
- b. All FLSA liability existing as of April 14, 1986 for overtime pay or the minimum wage for traditional governmental functions shall be eliminated.

5. Anti-discrimination.

The anti-discrimination section of the Act prohibits retaliation by an employer for the assertion of rights by an employee under FLSA. As amended the anti-discrimination provides:

- a. An employer's adjustment of work schedules to reduce overtime hours would not constitute discrimination under this provision so long as it was not undertaken to retaliate for an assertion of coverage. Such an adjustment is permissible under the Act but it does not supersede applicable requirement of state law or a collective bargaining agreement.

- b. Unilateral reduction of regular pay or fringe benefits intended to nullify extension of overtime compensation to public employees is unlawful. However, this provision is not intended to prevent a public employer from adjusting rates of pay at some later time in response to fiscal problems not directly attributable to the impact of extending FLSA to public employees.
- c. An employer who, after February 19, 1985, paid cash overtime at a time and one-half rate pursuant to the FLSA may not recoup these overtime payments from his employees by whatever means without violating the Act. State and local government employers are in no way obligated to comply with the Act's overtime provisions prior to April 15, 1986. But as stated in both committee reports, nothing in this legislation, including particularly the deferred effective date, is intended to encourage employers to postpone efforts to comply with the Act.

6. DOL Technical Assistance Available.

Secretary of Labor Brock has indicated on several occasions that DOL has established a toll free telephone line for the purpose of providing FLSA technical assistance: 800-233-FLSA. Calls may be placed between 8:15 a.m. and 4:45 p.m. (EDT) Monday through Friday.

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2. Medicare. Status Unchanged. In our special bulletin of October 11, 1985 to City Managers and City Clerks in Non-Manager cities, we indicated that the differences in the proposals by the House and Senate to include current and/or new hires under Medicare would have to be reconciled in a Conference Committee. The Conference Committee has not met to consider these differences but it does appear that at a minimum all public employees will be included under Medicare beginning with the 1986-87 federal fiscal year. As indicated, there no longer is any move to include uncovered or newly hired employees under Social Security. The proposed legislation would apply only to the Medicare portion of Social Security.

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July 18, 1985

M E M O R A N D U M No. 133

To: All Staff

From: *[Signature]* Robert E. Chase

Subject: FAIR LABOR STANDARDS ACT

As instructed by the Mayor, July 11, 1985 (copy attached), all overtime worked by covered employees must be paid in cash. No more compensatory time off is allowed.

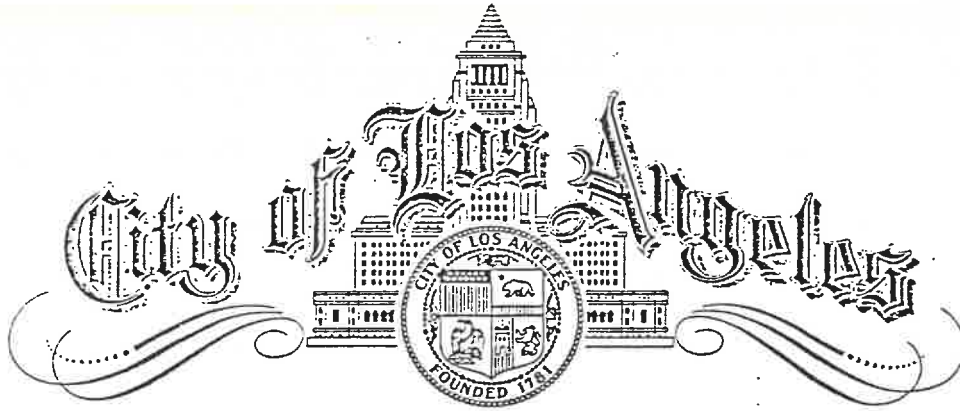
In this Office, the covered employees are in the classes of:

Office Trainee  
Clerk  
Senior Clerk  
Clerk Typist  
Senior Clerk Typist  
Administrative Intern  
Administrative Aide  
Management Aide  
Graphics Designer  
Student Worker  
Student Professional Worker

All other employees of the Office are exempt from the overtime provisions of the Act.

REC:JDH:ar

Attachment



CITY HALL  
LOS ANGELES, CALIFORNIA 90012  
(213) 485-3311

OFFICE OF THE MAYOR

TOM BRADLEY  
MAYOR

July 11, 1985

To: Honorable Members of the City Council  
Heads of All Departments of City Government

#### FAIR LABOR STANDARDS ACT

The U. S. Department of Labor has announced that the Fair Labor Standards Act overtime pay provisions now apply to City employees.

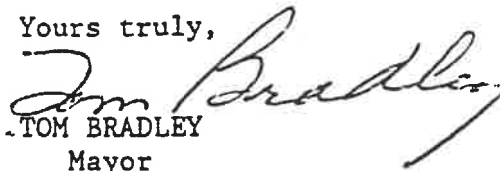
Effective immediately, all overtime worked by non-exempt, civilian employees must be paid in cash (the tentative listing of exempt and non-exempt classes was distributed to departments May 20). Granting compensatory time off for overtime worked is no longer permitted. Current accrued balances need not be paid off in cash.

There are many details and circumstances--4/10 and 9/80 modified work schedules, stand-by and call-out provisions, joint employment arrangements, work time volunteered, work periods, and regular rate of pay determinations--that must be reviewed with the Department of Labor for conformity with the Fair Labor Standards Act. DOL is unavailable at this time for such a review. Until further instructions are issued by the City Administrative Officer, departments are to continue current compensation practices in these areas.

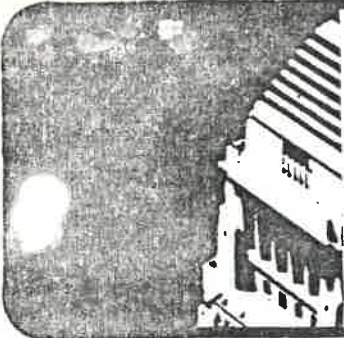
Departments are also instructed to restrict overtime worked by non-exempt civilian employees to an absolute minimum. Departments must put in place plans to operate within currently budgeted funds. The City Administrative Officer will be reviewing with you your plans and reporting further to me.

Separate instructions concerning uniformed employees will be sent later. I have also attached further background material on this issue for your information.

Yours truly,

  
TOM BRADLEY  
Mayor

Attachment



# EMPLOYEE RELATIONS BULLETIN

August 21, 1985

To: Heads of All Departments of City Government

## Introduction:

The Fair Labor Standards Act (FLSA) imposes its own set of definitions and requirements regarding employee workweeks, hours of work, regular rate of pay, and other terms. It is important that you understand these definitions and how they operate. A series of FLSA Bulletins will be issued addressing specific concepts in order to familiarize you and your staff with the Act's requirements.

Simply stated, the most common application of FLSA concerns non-exempt employees\*, whereby the City is bound by the overtime requirements. In general, for non-safety employees, the Act requires non-exempt employees to be compensated at one and one half times their "regular rate"\*\*\* of pay in cash for any time worked over 40 hours in a workweek.

## FLSA BULLETIN NO. 1 -- WORKWEEK

1. Workweek -- A workweek is a regular recurring period of 168 consecutive hours. A workweek need not be the same as the calendar week. A workweek may begin on any day of the week and at any hour of the day.

It is the responsibility of each department to establish workweeks. A single workweek may be established for all non-exempt employees of the department, or different workweeks may be established for different employees or groups of employees. Once the beginning of an employee's workweek is established, it remains fixed regardless of the employee's work schedule. The beginning of the workweek may only be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act.

For most City employees, the workweek should be the calendar week, i.e., 12:01 a.m. Sunday through 12 midnight Saturday. There will be exceptions as in Nos. 2 and 3 below.

2. 9/80 Modified Work Schedule -- It is feasible to continue the 9/80 plan (working 9 days and 80 hours in a two week period) without incurring any regular overtime liability.

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\*Non-exempt employees have been designated by class in a list distributed May 20, 1985.  
\*\*"Regular rate" will be discussed in a subsequent bulletin.

Employee Relations Bulletin - 3

5. 9/80 Modified Work Schedule--Holidays -- The same problem of a holiday falling on a scheduled work day occurs with the 9/80 plan as it does with the 4/10 plan, discussed in 4 above. The alternatives for covering the one hour when a 9/80 employee takes a holiday off are:

- using compensatory time (as long as any exists on the books)
- using vacation time
- working 32 hours instead of 31 that workweek
- paying for only 39 hours

6. 28 Day Deployment Period -- Some non-exempt civilian employees are scheduled to work 160 hours in a 28-day period. Schedules must be adjusted so they will work no more than 40 hours in a workweek.

7. Payroll Period -- The City's biweekly payroll period will not change.

8. Record Keeping -- A separate bulletin will be prepared on record keeping. Be forewarned that the records are subject to federal audit and the requirements apply to both non-exempt and exempt employees. Cease all "cuff time" and "supervisor's notebook" timekeeping practices.

BDC:ar

Employee Relations Bulletin - 2

For example, a person on the 9/80 with alternative Wednesdays off now receives no overtime compensation for working this schedule.

| <u>S</u> | <u>M</u> | <u>T</u> | <u>W</u> | <u>T</u> | <u>F</u> | <u>S</u> | <u>Total</u> |
|----------|----------|----------|----------|----------|----------|----------|--------------|
| 0        | 9        | 9        | 0        | 9        | 9        | 0        | 36           |
| 0        | 9        | 9        | 8        | 9        | 9        | 0        | <u>44</u>    |
|          |          |          |          |          |          |          | 80           |

Under FLSA each workweek stands alone. If the calendar week is used, four hours of overtime would be worked in the second week. A workweek starting at the midpoint of the Wednesday workday should be established, as follows:

| <u>S</u> | <u>M</u> | <u>T</u> | <u>W</u> | <u>T</u> | <u>F</u> | <u>S</u> | <u>Total</u> |
|----------|----------|----------|----------|----------|----------|----------|--------------|
|          |          |          | 0        | 9        | 9        | 0        | 40           |
| 0        | 9        | 9        | 4        | 4        | 9        | 0        | 40           |
| 0        | 9        | 9        | 0        | 0        | 9        | 0        | 40           |
| 0        | 9        | 9        | 4        |          |          |          |              |

This requires that the day off and the one eight-hour day be on the same day of the week. Separate workweeks will have to be established for each 9/80 configuration.

3. Ten On-Four Off -- Some continuous operations employees work a schedule of ten 8-hour days followed by four days off. Under FLSA, such a schedule is permissible without having any overtime, if the workweek is started after the second day off. In other words, consider the Ten-Four schedule as a Two-Five-Five-Two schedule.

4. 4-10 Modified Work Schedule -- The 4-10 plan (working four 10-hour days a week) causes a problem when a holiday falls on a scheduled work day. If the employee takes the day off, eight hours of holiday pay are paid. Before FLSA, the other two hours were covered with compensatory time off, vacation time, or a two hour debit was put on the books which the employee later had to erase with compensatory time off or work an extra two hours one week. Since compensatory time off, as we know it, will disappear and working an extra two hours in a subsequent week becomes overtime, practices must change.

From now on, the alternatives for covering the two hours when a 4-10 employee takes a holiday off are:

- using compensatory time (as long as any exists on the books)
- using vacation time
- working 32 hours instead of 30 that workweek
- paying for only 38 hours