



UNITED STATES CAPITOL POLICE OFFICE OF INSPECTOR GENERAL

Analysis of the United States Capitol Police Compensatory Time

Report Number OIG-2018-11

April 2018

~~REPORT RESTRICTION LANGUAGE~~

~~Distribution of this Document is Restricted~~

~~This report may contain sensitive law enforcement information and/or is part of the deliberative process privilege. This is the property of the Office of Inspector General and is intended solely for the official use of the United States Capitol Police, the Capitol Police Board, or any agency or organization receiving the report directly from the Office of Inspector General. No Secondary distribution may be made, in whole or in part, outside the United States Capitol Police or Capitol Police Board, by them or by other agencies or organizations, without prior authorization by the Inspector General or the Capitol Police Board.~~



OFFICE OF INSPECTOR GENERAL

PREFACE

The Office of Inspector General (OIG) prepared this report pursuant to the Inspector General Act of 1978, as amended. It is one of a series of audits, reviews, and investigative and special reports OIG prepares periodically as part of its oversight responsibility with respect to the United States Capitol Police (USCP) to identify and prevent fraud, waste, abuse, and mismanagement.

This report is the result of an assessment of the strengths and weaknesses of the office or function under review. Our work was based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

We developed our recommendations based on the best knowledge available to OIG and discussed in draft with those responsible for implementation. It is my hope that the recommendations will result in more effective, efficient, and/or economical operations.

I express my appreciation to those contributing to the preparation of this report.

Michael A. Bolton
Acting Inspector General

TABLE OF CONTENTS

Abbreviations and Acronyms	iii
Executive Summary	1
Background	2
Objectives, Scope, and Methodology	3
Results	4
Financial Impact of Comp Time	5
Effectiveness of Policies and Procedures	8
Appendices	10
Appendix A – Recommendations	11
Appendix B – Department Comments	12

Abbreviations and Acronyms

Congressional Accountability Act	CAA
Calendar Year	CY
<i>Collective Bargaining Agreement Between the FOP/U.S. Capitol Police Labor Committee and the United States Capitol Police, Effective June 8, 2010</i>	FOP CBA
Compensatory Time	Comp Time
Fair Labor Standards Act	FLSA
Office of Inspector General	OIG
United States Capitol Police	USCP or Department

EXECUTIVE SUMMARY

In accordance with our Fiscal Year 2018 Annual Plan, the Office of Inspector General (OIG) conducted an analysis of the United States Capitol Police (USCP or the Department) compensatory (comp) time. The objectives of our analysis were to (1) evaluate the financial impact of comp time on the Department's overtime budget and (2) assess the effectiveness of the Department's policies and procedures. Our scope included comp time for Calendar Years (CYs) 2014 through 2017.

The *Collective Bargaining Agreement Between the FOP/U.S. Capitol Police Labor Committee and the United States Capitol Police, Effective June 8, 2010* (FOP CBA), and USCP Directive [REDACTED], dated October 13, 2015, set forth the process for sworn or civilian employees to work authorized additional duty hours. The Directive states, "Employees may be required to work additional duty outside of their scheduled workweek or work period which may include working on a scheduled day off. Some additional duty may result in overtime compensation and will be governed by the provisions of the Fair Labor Standards Act (FLSA), as applied by the Congressional Accountability Act (CAA). Employees holding positions determined to be 'non-exempt' from the FLSA shall qualify for additional duty compensation at 1.5 rate, for hours worked in excess of 80 hours per pay period or 40 hours per week (non-compensable meal times excluded) for sworn and civilian employees, respectively."

The FOP CBA states that employees may elect either comp time or monetary compensation for overtime. According to the Department's interim guidance, [REDACTED], dated February 24, 2017, "compensatory time is time off with pay that is earned in lieu of monetary compensation for either additional duty or FLSA overtime work." Based on CY 2017 data, non-exempt employees worked 769,957.75 additional duty hours. Of those hours, Department employees' selected monetary compensation 88 percent of the time, with the remaining 12 percent selected as comp time.

Employee selection of comp time rather than monetary compensation [payment] for hours worked beyond the standard tour of duty had significant financial impact on the Department's overtime budget. In fact, the Department could have saved about \$8.5 million if it had paid employees a monetary compensation for their additional work performed beyond the standard tour of duty rather than comp time. When an employee uses comp time, the Department pays an individual to not work and "take time off with pay." In such a situation, the Department must backfill the tour of duty with a substitute at the rate of 1.5. For CY 2017, the Department incurred about \$8.5 million for comp time rather than monetary compensation for overtime. Comp time often has a compounding or cascading effect, which can further increase overtime costs. An employee who works an 8-hour overtime shift, for example, can earn 12 hours of comp time. When that individual uses the 12 hours of comp time, the employee who fills in (commonly referred to as "backfill") can earn 18 hours of comp time working those 12 hours (12 hours x 1.5 rate = 18 hours).

The FOP CBA states that credit toward the overtime threshold of 80 hours is given for actual hours worked, legal holidays, and any leave applied for on the appropriate department form and approved. Based on CY 2017 data, many non-exempt employees worked less than 80 hours per pay period but were still able to reach the overtime threshold and earn overtime compensation. The Department could have saved about \$5 million if it had ensured that employees worked 80 hours before earning overtime at the 1.5 rate.

Based on CY 2017 data, numerous employees did not work 80 hours per pay period but still earned overtime at the 1.5 rate during that pay period. In pay period 7 (April 2-15, 2017), for example, an employee worked zero hours at the base 1.0 rate, took 80 hours of comp time, and still received 65.25 hours of overtime at the 1.5 rate during the pay period. Based on CY 2017 data, there were 82 instances when employees worked zero hours at the 1.0 rate, took 80 hours of leave, and still earned overtime at the 1.5 rate within the same pay period. Based on that data, we calculated that requiring employees to work 80 hours per pay period before earning the 1.5 rate could have saved the Department about \$5 million. Had Department Directives and the FOP not allowed for the use of comp time and not allowed crediting leave toward the overtime threshold, the Department could have saved \$13.5 million during CY 2017.

Opportunities exist for improving effectiveness of time and attendance controls. The Department should finalize its interim guidance for absences and leave, which is more than a year old, and strengthen controls related to time and attendance accountability. Our analysis of CY 2017 data showed 217 instances for which the timekeeper made changes without explanation to an employee's unscheduled and scheduled leave. Because scheduled leave counts toward overtime, employees have an incentive to classify leave as scheduled instead of unscheduled to ensure that hours are included in determining overtime at the 1.5 rate. Unscheduled leave does not count toward the overtime threshold of 80 hours per pay period (non-compensable meal times excluded). Unscheduled to scheduled leave changes influence overtime costs and could lead to abuse if not monitored appropriately.

To use its overtime appropriation and human capital in the most efficient and effective manner, OIG made one recommendation as shown in Appendix A. On April 26, 2018, OIG conducted an exit conference. On April 10, 2018, we provided a draft report to Department officials. We incorporated the Department's comments as applicable and attached their response to the report in its entirety in Appendix B.

Background

The United States Capitol Police (USCP or the Department) has increased its use of overtime steadily over the last several years to keep pace with increased security requirements throughout the Capitol Complex. As reported in a prior Office of Inspector General (OIG) report,¹ non-exempt employees can earn overtime as either compensatory (comp) leave or cash. The *Collective Bargaining Agreement Between the FOP/U.S. Capitol Police Labor Committee and the United*

¹ *Analysis of United States Capitol Police Overtime*, Report Number OIG-2017-13, dated September 2017.

States Capitol Police, Effective June 8, 2010 (FOP CBA), and USCP Directive [REDACTED] [REDACTED] dated October 13, 2015, set forth the process by which sworn or civilian employees can work authorized additional duty hours.

Directive [REDACTED] states:

Employees may be required to work additional duty outside of their scheduled workweek or work period which may include working on a scheduled day off. Some additional duty may result in overtime compensation and will be governed by the provisions of the Fair Labor Standards Act (FLSA), as applied by the Congressional Accountability Act (CAA). Employees holding positions determined to be 'non exempt' from the FLSA shall qualify for additional duty compensation at 1.5 rate, for hours worked in excess of 80 hours per pay period or 40 hours per week (non-compensable meal times excluded) for sworn and civilian employees, respectively... All compensation (additional pay and compensatory time) for eligible exempt employees shall be compensated at a 1.0 rate provided the sum total of the compensation does not exceed the maximum annual payable rate allocated on a pay period basis."

According to the Directive, [REDACTED] is a workforce management system that manages, tracks, and reports an employee's hours worked. The Department codes overtime to unique event codes in order to allocate the use of its resources across all events.

In accordance with USCP Interim Guidance, [REDACTED], dated February 24, 2017, the Office of Human Resources has overall responsibility for the oversight and administration of the and attendance program. According to USCP Directive [REDACTED], Bureau Commanders and Office Directors are responsible for the overall management of additional duty.

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with our Fiscal Year 2018 Annual Plan, OIG conducted an analysis of USCP comp time to (1) evaluate the financial impact of comp time and (2) assess the effectiveness of the current policies and procedures. Our scope included overtime hours (monetary compensation and comp time) for calendar years (CYs) 2014 through 2017 as shown in Table 1.

To accomplish our objectives, we interviewed Department officials to gain an understanding of the overtime and comp time processes. We also reviewed the following guidance related to comp time:

- USCP Interim Guidance, [REDACTED], dated February 24, 2017
- USCP Interim Guidance, [REDACTED], dated February 24, 2017
- USCP Directive [REDACTED], dated October 13, 2015
- *Collective Bargaining Agreement Between the FOP/U.S. Capitol Police Labor Committee and the United States Capitol Police Effective June 8, 2010*

OIG calculated the financial impact of comp time using data from CY 2017 because it was the most up-to-date information available at the time of our analysis. We calculated the financial impact related to the cost to backfill shifts for employees using comp time. We also calculated the savings the Department could have realized by requiring employees to work 80 hours in a pay period before receiving overtime pay at the 1.5 rate.

Table 1: Total Overtime Hours by Category

<i>Calendar Year</i>	<i>Number of Hours Comp Time</i>	<i>Number of Hours Monetary Compensation</i>	<i>Total Hours for Overtime Compensation</i>
2014	53,256.75	423,068.25	476,325.00
2015	58,136.25	466,754.75	524,891.00
2016	68,783.75	559,018.00	627,801.75
2017	90,960.50	678,997.25	769,957.75

Source: OIG generated from CYs 2014-2017 overtime data provided by the Department.

To assess the effectiveness of controls, OIG reviewed policies and procedures as well as time and attendance records that included scheduled and unscheduled leave. As part of both the FY 2016 and 2017 financial statement audits, OIG confirmed that controls related to additional duty were operating as designed. In order to test the effectiveness of policies and procedures related to comp time, we verified support for additional duty in the form of assigned shift schedules or Form [REDACTED]

OIG conducted this analysis in Washington, D.C., from January 2018 through March 2018. We did not conduct an audit, the objective of which would be the expression of an opinion on Department programs. Accordingly, we do not express such an opinion. OIG did not conduct this analysis in accordance with generally accepted government auditing standards. Had we conducted an audit and followed such standards, other matters might have come to our attention.

We conducted an exit conference on April 26, 2018. We provided a draft copy of this report to Department officials for comment on April 10, 2018. A list of recommendations is shown in Appendix A. We incorporated Department comments as applicable and attached their response to the report in its entirety as Appendix B. ~~This report is intended solely for the information and use of the Department, the USCP Board, and USCP Oversight Committees and should not be used by anyone other than the specified parties.~~

RESULTS

Employee selection of comp time rather than monetary compensation for hours worked beyond the standard tour of duty had a significant financial impact on the Department's overtime budget. Opportunities exist for improving the effectiveness of time and attendance controls.

Financial Impact of Comp Time

Using comp time had a financial impact to the Department. In fact, the Department could have saved about \$13.5 million if it (1) paid monetary compensation for additional work performed beyond the standard tour of duty in lieu of comp time and (2) ensured that employees worked 80 hours before earning overtime at the 1.5 rate. Comp time can have a compounding or cascading effect, which further affects the overtime budget.

The FOP CBA states that employees may choose either comp time or monetary compensation for overtime. According to the Department's interim guidance, [REDACTED], "compensatory time is time off with pay that is earned in lieu of monetary compensation for either additional duty or FLSA overtime work." Based on CY 2017 data, non-exempt employees worked 769,957.75 additional duty hours. As shown in Table 2, non-exempt employees selected monetary compensation for overtime work 88 percent (678,997.25 hours) of the time. For the remaining 12 percent (90,960.50 hours), employees selected comp time.

Table 2: CY 2017 Additional Duty Hours by Category

<i>Category</i>	<i>Hours Worked</i>	<i>Percentage</i>
Comp Time	90,960.50	11.81%
Monetary Compensation	678,997.25	88.19%
Total	769,957.75	100.00%

Source: OIG generated from CY 2017 data provided by the Department.

When an employee uses comp time, the Department pays the individual to "take time off with pay" and then must backfill the tour of duty with a substitute at the 1.5 rate. Based on an average overtime 1.5 rate of \$62.60 and hours earned for CY 2017, the Department incurred about \$8.5 million for the use of comp time rather than simply paying monetary compensation for overtime as shown in Table 3.

Exhibit 1: FOP CBA



Table 3: CY 2017 Cost Comparison

	<i>Hours</i>	<i>Cost</i>
Cost Utilizing Comp Time		
Comp time taken at 1.0 rate (\$41.74*)	136,283 ²	\$5,687,941
Backfill while employees take earned comp time at 1.5 rate (\$62.60)	136,283	\$8,531,911
Total	272,566	\$14,219,852
Cost Utilizing Monetary Compensation Only		
Monetary Compensation at 1.5 for overtime hours worked in lieu of comp time (\$62.60)	90,855	\$5,687,941
Total	90,855	\$5,687,941
Savings (Paying Monetary Compensation only for Overtime in lieu of comp time)		\$8,531,911

Source: OIG generated from CY 2017 comp data provided by the Department.

*Average overtime rate (basic rate of \$41.74 x 1.5=\$62.60.)

Amounts rounded.

An additional financial impact exists for the Department when a non-exempt employee earns overtime at the 1.5 rate prior to working 80 hours during a pay period. In accordance with the FOP CBA, a non-exempt employee can credit scheduled leave toward the 80 hours overtime threshold requirement. Title 29, section 778.202 of the Code of Federal Regulations (29 CFR 778.202) states that “Premium pay for hours in excess of a daily or weekly standard” is *permissible but not required* to count leave hours as hours worked when determining the amount of overtime pay. However, the regulations applicable to the Department are silent on that issue. Based on CY 2017 data, we identified 82 instances when employees worked zero hours at the 1.0 rate, took 80 hours of leave, and still earned overtime at the 1.5 rate within the same pay period. In pay period 7 (April 2-15, 2017), for example, an employee worked zero hours at the base 1.0 rate, took 80 hours of comp time, and still received 65.25 hours of overtime at the 1.5 rate during that pay period. Requiring employees to work 80 hours per pay period before earning the 1.5 rate could have saved the Department about \$5 million³ for CY 2017.

Employees have learned how to build comp balances early in the year, then use leave during their regularly scheduled shifts to earn overtime. Although considered “gaming the system,” the practice is allowable under the current FOP CBA and Department Directives. Table 4 shows employees who benefited the most by working less than 80 hours during a pay period while earning large amounts of overtime pay for CY 2017.

² Comparison infers that non-exempt employees worked 90,855.33 hours of overtime at the 1.5 rate to earn the 136,283 hours of comp time actually used in CY 2017.

³ For each pay period, determined the number of overtime hours earned at the 1.5 rate before working 80 hours at the base 1.0 rate for each non-exempt employee. Calculated savings for each employee’s premium portion of the overtime (.5 of their basic rate) times hours earned.

Table 4: High Overtime Users for CY 2017

<i>Employee</i>	<i>Hours Worked at Base Rate (1.0)</i>	<i>Weekly Average at Base Rate (1.0)</i>	<i>Hours Worked at Overtime Rate (1.5)</i>	<i>Weekly Average at Overtime Rate (1.5)</i>
Non-exempt Employee 1	519.75	10.00	945.75	18.19
Non-exempt Employee 2	1,053.75	20.26	1,460.25	28.08
Non-exempt Employee 3	1,114.25	21.43	865.25	16.64
Non-exempt Employee 4	1,123.00	21.60	1,185.50	22.80
Non-exempt Employee 5	1,212.25	23.31	1,654.00	31.81
Non-exempt Employee 6	1,223.75	23.53	600.25	11.54
Non-exempt Employee 7	1,352.50	26.01	982.25	18.89
Non-exempt Employee 8	1,522.25	29.27	843.50	16.22
Non-exempt Employee 9	1,546.50	29.74	1,370.75	26.36
Non-exempt Employee 10	1,575.00	30.29	1,318.75	25.36

Source: OIG generated from CY 2017 data provided by the Department.

Employee 1, for example, manipulated the system to work at the 1.5 rate while working a minimum of hours at base rate. During CY 2017, the employee worked only 519.75 hours at the 1.0 base rate, used 1,514.75 hours of leave, of which 1,138.75 hours were comp leave. In 14 separate pay periods, the employee used 80 hours of leave. In 7 of 14 pay periods, the employee used 80 hours of leave, but still earned overtime at the 1.5 rate. From pay period 19 through 25 consisting of 14 weeks, the employee did not work a single shift for the Department. As demonstrated, this employee used the prevailing overtime structure to build up comp leave balances early in the year then use leave for the regularly scheduled shifts to earn overtime. Although allowable, better monitoring of such a practice could assist in better use of the Department overtime appropriation and its limited human capital.

Comp time often has a compounding as well as cascading effect, which can further increase overtime costs. An employee who works an 8-hour overtime shift, for example, can earn 12 hours of comp time. When that individual uses the 12 hours of comp time, the backfill employee can earn 18 hours of comp time working those 12 hours (12 hours x 1.5 rate = 18 hours).

Conclusions

A significant financial impact exists to the Department related to using comp time in lieu of monetary compensation. Cost savings could be achieved if the Department (1) paid monetary compensation for additional work performed beyond the standard tour of duty in lieu of comp time and (2) ensured that employees worked 80 hours before earning overtime at the 1.5 rate. Overtime costs also are increased because of the compounding effect of comp time. Although allowable, changing current comp time policies and procedures could assist in better utilization of the Department overtime appropriation and its limited human capital. Changes would require renegotiation of the FOP CBA and a change to title 2, subsection 1313 (c)(4) of the United States

Code [2 U.S.C. § 1313 (c)(4)].⁴ Thus, OIG suggests, that USCP, in coordination with the USCP Board, Committees of Jurisdictions, and employee unions, if applicable, consider negotiating changes to (1) pay only monetary compensation for overtime hours, and (2) require an employee to work 80 hours in a given pay period before earning overtime hours at the 1.5 rate; thereby, ensuring the best use of its scarce resources. Because the Department cannot unilaterally make such changes, OIG makes no formal recommendation.

Effectiveness of Policies and Procedures

Opportunities exist for improving the effectiveness of time and attendance policies and procedures. The Department should complete efforts to finalize its interim absence and leave guidance, which are more than a year old, and strengthen controls related to accountability of time and attendance.

Ineffective Policies and Procedures

Department policies do not allow for effective management of comp time. As noted in the report, Directive [REDACTED], in conjunction with the FOP CBA, allow non-exempt employees to earn overtime before working 80 hours in a pay period. However, changes would require renegotiation of the FOP CBA, which the Department cannot unilaterally change.

The Department also does not have any documented procedures instructing timekeepers or supervisors on how to make changes from unscheduled to scheduled leave. Employees have an incentive to classify leave as scheduled instead of unscheduled to ensure that hours are included in determining overtime at the 1.5 rate because unscheduled leave does not count toward the overtime threshold of 80 hours per pay period (non-compensable meal times excluded). For example, an officer may work 72 hours, take 8 hours of unscheduled leave, then work an additional 8 hours. In such a case, the officer would earn overtime for the additional 8 hours at the basic rate of pay. Had the 8 hours been scheduled leave, the officer would have earned overtime for the additional shift at 1.5 the basic rate of pay. The prevailing structure can be an incentive for employees to have leave classified as scheduled leave so the hours off will be included in the hours worked for determining overtime at the 1.5 rate.

OIG reviewed unscheduled/scheduled leave changes in CY 2017, ultimately identifying 217 instances, or 1,072 hours, in which the timekeeper changed the employee from unscheduled to scheduled leave. In many of those instances, no explanation was listed for the change in [REDACTED]. The changes were allowed because no established criteria existed for a timekeeper to make changes from unscheduled to scheduled leave. Unscheduled to scheduled leave changes influence overtime costs and could lead to abuse if not monitored appropriately. Without further

⁴ 2 U.S.C. § 1313 (c)(4) states that “Law enforcement personnel of the Capitol Police who are subject to the exemption under section 7(k) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(k)) may elect to receive compensatory time off in lieu of overtime compensation for hours worked in excess of the maximum for their work period.”

investigation, there is no way of knowing which instances were legitimate or were possible cases of abuse.

Conclusions

Unscheduled to scheduled leave changes could influence overtime costs and lead to abuse if not monitored appropriately.


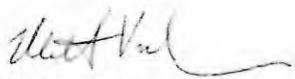
Recommendation 1: We recommend that the United States Capitol Police establish procedures to ensure supervisors monitor changes from unscheduled to scheduled leave.

APPENDICES

List of Recommendations

Recommendation 1: We recommend that the United States Capitol Police establish procedures to ensure supervisors monitor changes from unscheduled to scheduled leave.

DEPARTMENT COMMENTS

	UNITED STATES CAPITOL POLICE OFFICE OF THE CHIEF 119 D STREET NE WASHINGTON, DC 20515-7715 April 23, 2018	Phone: 202-224-6800
	COP 180098	
MEMORANDUM		
TO:	Mr. Michael A. Bolton Acting Inspector General	
FROM:	Matthew R. Verderosa Chief of Police	
SUBJECT:	Response to Office of Inspector General draft report <i>Analysis of the United States Capitol Police Compensatory Time</i> (Report No. OIG-2018-11)	
<p>The purpose of this memorandum is to provide the United States Capitol Police response to the recommendations contained within the Office of Inspector General's (OIG) draft report <i>Analysis of the United States Capitol Police Compensatory Time</i> (Report No. OIG-2018-11).</p> <p>The Department generally agrees with all of the recommendations and appreciates the opportunity to work with the OIG to further improve upon current policies and procedures in place, specifically dealing with Compensatory Time within the Interim Guidance <i>Absence and Leave</i>. The Department will assign Action Plans to appropriate personnel for each recommendation in effect in order to achieve long-term resolution of these matters.</p> <p>Thank you for the opportunity to respond to the OIG's draft report. Your continued support of the women and men of the United States Capitol Police is appreciated.</p> <p>Very respectfully,</p> <p> Matthew R. Verderosa Chief of Police</p> <p>cc: Steven A. Sund, Assistant Chief of Police Richard L. Braddock, Chief Administrative Officer [REDACTED] USCP Audit Liaison</p>		
Nationally Accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc.		

This page intentionally left blank

~~LAW ENFORCEMENT SENSITIVE~~

CONTACTING THE OFFICE OF INSPECTOR GENERAL

Success of the OIG mission to prevent fraud, waste, abuse, or mismanagement depends on the cooperation of employees and the public. There are several ways to report questionable activity.

Call us at 202-593-3868 or toll-free at 866-906-2446. A confidential or anonymous message can be left 24 hours a day/7 days a week.

Toll-Free - 1-866-906-2446



Write us:

*United States Capitol Police
Attn: Office of Inspector General
499 South Capitol St. SW, Suite 345
Washington, DC 20003*



Or visit us:

*499 South Capitol Street, SW, Suite 345
Washington, DC 20003*



You can also contact us by email at: OIG@USCP.GOV

When making a report, convey as much information as possible such as: Who? What? Where? When? Why? Complaints may be made anonymously or you may request confidentiality.

Additional Information and Copies:

To obtain additional copies of this report, call OIG at 202-593-4201.

